No. 91-2012

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In The

Supreme Court of the United States

October Term, 1992

JACKIE HOLDER, individually and in his official capacity as County Commissioner for Bleckley County, Georgia, and ROBERT JOHNSON, individually and in his official capacity as Superintendent of Elections for Bleckley County, Georgia,

Petitioners,

v.

REV. E. K. HALL, SR., DAVID WALKER, U. S. DONALDSON, RICHARD HARRIS, WILLIE ATES, REV. WILSON C. ROBERSON, and NAACP Chapter of Cochran/Bleckley County,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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STATEMENT OF THE CASE

Petitioners' statement of the case goes far beyond what is necessary to resolve the question presented as framed by this Court, and instead includes matters relevant only to the merits of respondents' dilution claim. There being numerous omissions in petitioners' statement, respondents are compelled to supply the Court with what they believe is a more accurate and fuller statement of the case.

A. The Proceedings Below

Respondents are African American residents and voters of Bleckley County, Georgia and the NAACP Chapter of Cochran/Bleckley County (hereinafter "plaintiffs"). They filed this action on July 17, 1985 alleging that the at-large elected, sole commissioner form of county government had a racially discriminatory purpose and effect and resulted in the dilution of their voting strength in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the Fourteenth and Fifteenth Amendments.[1] Petitioners are the county commissioner and the superintendent of elections of Bleckley County (hereinafter "Bleckley County" or "the county"). Appendix to the Petition 66 (hereinafter "App.").

Bleckley County was established in 1912. The county is in rural middle Georgia and contains 219 square miles.

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[1] The plaintiffs also challenged the district voting plan for the Bleckley County Board of Education and the method of electing the Cochran City Council. These claims were settled by consent of the parties on November 22, 1985 and July 17, 1986 respectively, and are not before the Court. Appendix to the Petition 66 n.5 (hereinafter "App.").

According to the 1990 Census, the county has a population of 10,430, of whom 2,332 (22.4%) are black. No black has ever been elected to the county commission or to any other countywide office.

Trial on the merits was held on December 4-7, 1989. At the conclusion of the evidence the district court judge stated that:

> having run for public office myself, I'll guarantee you, under the circumstances, I wouldn't run if I were black in [Bleckley] county. You're going to put your hard earned time and shoe leather campaigning throughout this county . . . under these circumstances?

App. 79; Tr. 808. Despite this bleak assessment of the opportunity for minority political participation in Bleckley County, the district court ruled for defendants on March 7, 1991, finding that plaintiffs failed to prove that voting was racially polarized, that minority voters were politically cohesive, or that their voting strength was diluted by the at-large elected, sole commissioner system in violation of Section 2. App. 51, 54-5, 60-1.

The court refused to consider whether a majority vote requirement for election of the commissioner had a discriminatory purpose or effect because the requirement was part of state law which the court held the county was powerless to change, and because litigation concerning whether or not the law violated the Voting Rights Act throughout the state was pending in another case in federal district court, *Brooks v. Miller*, Civ. No. 1:90-CV-1001-RCF (N.D.Ga.). App. 12, 27. The court dismissed plaintiffs' claim that the challenged method of elections had been adopted or was being maintained with a discriminatory purpose on the ground that there was no "specific evidence" of racial intent. App. 25.

Plaintiffs filed their notice of appeal on April 3, 1991, and on March 25, 1992 the court of appeals reversed. It held that while the sole commissioner form of government "is unusual," the plaintiffs' claim "is not a unique challenge, however, and we have already held that § 2 challenges to sole commissioner forms of government are subject to the same analysis employed by the United States Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986)," *citing Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1549 (1987), *cert. denied sub nom. Duncan v. Carrollton Branch of NAACP*, 485 U.S. 936 (1988). App. 67-8.[2]

B. The Sole Commissioner

Each county in Georgia has a "governing authority." Constitution of Georgia, Art. IX, Sec. I, Para. I. The governing authority means "the board of county commissioners, the sole county commissioner, or the governing authority of a consolidated government." O.C.G.A. § 1-3-3(7). The governing authority exercises all the legislative and executive powers of county government.[3] In

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[2] In Carrollton County Branch of NAACP v. Stallings, supra, 829 F.2d at 1563, the court of appeals reversed the decision of the district court dismissing plaintiffs' challenge to the at-large elected sole commissioner form of government in Carroll County, and remanded the case with instructions to consider minority size and geographic compactness within proposed three and five member commission forms of government.

[3] Those powers include directing and controlling all the property of the county, levying general and special taxes for the county, constructing and maintaining roads and bridges, filling vacancies in county offices, examining, settling, and allowing all

Bleckley County the governing authority is a sole commissioner. No counties outside Georgia use a sole commissioner as the governing authority; all the other states use multi-member county governing bodies. *1987 Census of Governments*, Vol. 1, No. 2: Government Organization; Popularly Elected Officials [GC87(1)-2] (January 1990).

Even in Georgia the sole commissioner is an exception to the rule. The multi-member board of commissioners form of county government is overwhelmingly predominant, with a five member board being the most common size. According to a 1990 survey conducted by the Georgia Department of Community Affairs, only 17 of the state's 159 counties reported using the sole commissioner form of government. *County Government Information Catalog: 1991*, Georgia Department of Community Affairs (1991).[4] All the rest reported using a board of commissioners, the size of which ranged from three to 12 members, with 71 counties using a five member board. Since 1990 the number of sole commissioner counties has steadily declined.[5]

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claims against the county, examining and auditing the accounts of all officers of the county, making rules and regulations for the support of the poor, for the county police, and the health of the county, hiring and firing county employees, and managing the every day operations of the county. O.C.G.A. § 36-5-22.1; Tr. 495-97, 548.

[4] The counties were: Bartow, Bleckley, Catoosa, Chattooga, Cherokee, Dade, Dodge, Haralson, Heard, Lumpkin, Murray, Pickens, Pulaski, Stewart, Union, Walker, and Webster.

[5] The general assembly abolished the sole commissioner system in Cherokee County in 1989, Ga. Laws 1989, p. 4295, in Dade, Heard, and Franklin Counties in 1991, Ga. Laws 1991, pp. 3893, 3976, 4681, and in Catoosa and Murray Counties in 1992. Ga. Laws 1992, pp. 4501, 4694. In addition to Carroll County,

C. The Majority Vote Requirement

The county commissioner is nominated and elected by a majority of the votes cast. The Bleckley County Democratic party executive committee first adopted a majority vote requirement for primary elections in 1964. Pl.Ex. 250; Tr. 121-23, 249. Prior to that time nomination was by a simple plurality. Tr. 123. Party leaders, such as county chairman James S. Dykes, were firmly committed to maintaining white political control and understood the harmful impact of a majority vote requirement on black voters. Tr. 128-29, 134-35.

The general assembly also enacted in 1964 a law requiring a majority vote for nomination or election to all state and county offices. Representative Denmark Groover was a principal sponsor of the majority vote law and said that it was needed to thwart the recent increases in Negro voter registration and to make it impossible for the black "bloc vote" to elect a candidate by a plurality. Pl.Exs. 229-31; Tr. 125-26, 170, 249.

D. Attempts to Expand the Size of the Commission

In 1974, 1975, and 1983 the Bleckley County grand jury recommended that a committee be established to

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sole commissioner systems were abolished in Telfair, Webster, and Wheeler Counties as a result of Section 2 litigation. Clark v. Telfair County, Georgia Commission, Civ. No. 287-25 (S.D.Ga. Oct. 26, 1988); Nealy v. Webster County, Georgia, Civ. No. 88-203 (M.D.Ga. March 16, 1990); Howard v. Commissioner of Wheeler County, Georgia, Civ. No. 390-057 (S.D.Ga. Jan. 13, 1993). Copies of the orders in these cases are reproduced in the appendix to respondents' brief. A similar Section 2 challenge is pending in Pulaski County. Sutton v. Anderson, Civ. No. 89-58-1 (M.D.Ga.).

study the feasibility of adopting a board of commissioners for the county. Pl.Exs. 335, 379, 209; Tr. 249. In 1982, 1983, and 1984 the grand juries recommended that a referendum be held on whether to change the sole commissioner system. Pl.Exs. 132, 207; Tr. 249, 408-09.

In 1985 the general assembly enacted legislation creating a board of commissioners of Bleckley County, consisting of a chairperson elected at-large and five members elected from the five single member districts then in use for the county board of education. Ga. Laws 1985, p. 4406. The legislation was required to be approved by a majority of the voters at a countywide referendum before it could be implemented.

The referendum was held on November 4, 1986, and was defeated. App. 9. There was organized interest in the black community in support of the referendum, but it was on a small scale. Tr. 320-21. The sole commissioner, Jackie Holder, actively campaigned against the referendum. Tr. 540. He ran newspaper and radio ads urging that the sole commissioner system be maintained. *Id.* The vote was 43% in favor of the referendum and 57% against. App. 9.[6]

E. Application of the *Gingles* Factors by the Court of Appeals

The court of appeals applied the analysis of *Thornburg v. Gingles*, 478 U.S. 30, 50-1 (1986), in its review of the decision of the district court. In *Gingles* this Court established a three part test for determining a violation of

[6] The county contends that "Bleckley County citizens prefer the sole commissioner form of government." Brief for the Petitioners, p. 7. Some white citizens of the county may prefer it, but as this litigation demonstrates black citizens do not.

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The minority must demonstrate that: (1) it is geographically compact, *i.e.*, it could constitute a majority in a single member district; (2) it is politically cohesive; and, (3) the majority votes as a bloc usually to defeat the candidates supported by the minority.[7] Bloc voting was defined as " 'a consistent relationship between [the] race of the voter and the way in which the voter votes,' . . . or to put it differently, where 'black voters and white voters vote differently.' " *Id.* at 53 n.21. The *Gingles* analysis was affirmed by this Court in *Growe v. Emison*, 113 S.Ct. 1075, 1084 (1993), and *Voinovich v. Quilter*, 113 S.Ct 1149, 1157 (1993).

1. Geographic Compactness

Both the district court and the court of appeals found that black voters in Bleckley County "are sufficiently numerous and geographically compact to constitute a majority in a single member district . . . [and] that the first *Gingles* factor has been satisfied." App. 75. The majority black single member district identified by the court of appeals was "one of the five districts currently found in Bleckley County," App. 74, referring to district 2 (65% black) of the existing plan for the county board of education.

[7] According to the Court, the other factors probative of minority vote dilution listed in the senate report which accompanied the 1982 amendments to the Voting Rights Act, S.Rep. No. 147, 97th Cong., 2d Sess. 28-9 (1982), such as the lingering effects of past discrimination, racial campaign appeals, etc. "are supportive of, but *not essential to*, a minority voter's claim." 478 U.S. at 48 n.15 (emphasis in original).

The county argued that the proper measure of size and geographic compactness should be the entire county. The court of appeals rejected this contention holding that:

> it is appropriate to consider the size and geographical compactness of the minority group within a restructured form of the challenged system when the *existing structure* is being challenged as dilutive.

App. 74 (emphasis in original).

2. Racial Bloc Voting

The court of appeals reversed the district court's finding of no bloc voting, concluding that it was based on a "misconception of the law," App. 77, and held that "the evidence conclusively establishes a pattern of racially polarized voting in Bleckley County." App. 84-5. The district court's error lay in considering only "raw election figures and statistical calculations," App. 75, and in refusing to consider "factors beyond election data that tend to prove unequal access to the electoral process." App. 77.

The opportunity to use ecological regression and homogeneous precinct analysis, methods used in *Thornburg v. Gingles, supra*, 478 U.S. at 52-3, was limited in this case. Few blacks have run countywide, and in August, 1984, the year in which plaintiff Rev. E.K. Hall ran for judge of probate court, the county reduced its polling places from eight to one. App. 65 n.3, 78 n.13. Statistical analysis depends on the presence of multiple polling places for data points. Plaintiffs did, however, produce evidence of the results of a total of 30 elections – four countywide and 22 municipal involving viable black candidates, and four other elections in which race was a significant issue. In making its finding of racial bloc

voting, the court of appeals relied upon this, and other, evidence as follows:

a. Countywide regression analysis revealed that 60.8% of black voters, but only 0.9% of white voters, supported the black candidate, Rev. Jesse Jackson, in the 1984 presidential primary. App. 79.

b. Exit poll data indicated that over 90% of the black electorate supported Jackson in the 1988 presidential primary, while white support was less than 2%. App. 79-80.

c. Black candidates were regularly defeated by white candidates in at-large elections for the city of Cochran, the county seat and the largest municipality in the county.[8] After elections were restructured as a result of this law suit so that the city had a majority black district, black candidates were elected as the representatives of the majority black district. App. 66 n.5, 81.

d. The only black to run for a countywide office, plaintiff Hall, was soundly defeated. After this law suit was brought and a single member district plan was adopted for the county board of education, Hall was elected to the board from the majority black district. App. 78 n.13, 81.

e. The 1974 Lieutenant Governor election involving J.B. Stoner, "an avowed white racist," the 1966 and 1974 Gubernatorial elections involving Lester Maddox, a former governor and segregationist, and the 1968

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[8] The only exception was Willie Basby who was first elected under the city's plurality vote system in 1973 in a contest with two whites, getting 39% of the vote. Thereafter, Basby ran as an incumbent, or having been an incumbent. Both the district and appellate courts characterized Basby's success as "an aberration." App. 81 n.16; Tr. 808.

presidential election involving then-segregationist George Wallace, showed "that a substantial number of Bleckley County's voters were highly susceptible to racist, segregationist appeals as late as the mid 1970's, and that they voted accordingly." App. 82.

f. "Bleckley County had enforced racial segregation in all aspects of local government and local government services until forced to change by federal legislation in the 1960's." App. 83.[9]

g. "Bleckley County had debated and fought desegregation in all aspects of public life, continuing its resistance until as late as the early 1970's." App. 83.[10]

h. "Local government had deprived blacks of the opportunity to participate in public life and government, even prohibiting blacks from registering to

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[9] The segregated school available to blacks were so grossly unequal that in 1963 the state took action to terminate state funds to Bleckley County. Tr. 137. The local newspaper reported in 1963 that "the Negro schools . . . have been condemned for several years." Pl.Ex. 244; Tr. 249. Public housing was built on a racially segregated basis. Although no longer segregated by law, Happy Hill Homes, built in the 1950s as a black project, has never had a white resident. Tr. 68. Even the bookmobile in Bleckley County was Jim Crow. Pl.Ex. 56; Tr. 408-09.

[10] In 1960, representative Ben Jessup took out a political ad addressed "To the White Voters of Bleckley County" promising to vote for the continuation of racial segregation. Pl.Ex. 20; Tr. 408-09. Mr. Jessup is now a member of the city council of Cochran. The board of education adopted the position in 1965 that "racial integration of school students . . . [was] morally and socially wrong." Pl.Ex. 260, Tr. 249. After passage of the Civil Rights Act of 1964, Cochran closed its city pool and paved it over with bricks. Tr. 64. Schools in Bleckley County were not desegregated until 1970, and only after the Department of Health, Education, and Welfare notified the county that its federal funds were being terminated. Pl.Ex. 274; Tr. 144, 249.

vote and from voting until well into the 1960's." App. 83.[11]

i. "[T]he black citizens of Bleckley County continue to suffer from the effects of discrimination," and their "depressed socio-economic situation 'hinders the ability of and deters black residents of Bleckley County from running for public office, voting and otherwise participating in the political process.' " App. 83.[12]

j. "[T]he 'personal preferences' of Bleckley County's citizens has resulted in racially exclusive organizations," including churches, civic clubs, and social

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[11] Plaintiff Roberson first tried to register in Bleckley County in 1955 when he moved there to teach in the city schools. He went to the courthouse, the only place where registration was permitted, but the chief of police escorted him outside. "No niggers register in this courthouse," the chief informed him. Tr. 55. Roberson complained about the incident to his school superintendent, but the superintendent told him, "just don't push the issue." Tr. 57. The following year someone burned a cross in Roberson's yard. Tr. 73. Roberson did not try to register again until 1964. At the time the Voting Rights Act was passed in 1965, only 45 blacks (3% of the black voting age population) were registered to vote in Bleckley County. Long after passage of the act some blacks were "afraid" to register at the courthouse. Tr. 338. Black voter registration did not increase significantly until 1984 when satellite registration was first allowed. Tr. 110, 279-80, 335-36. No blacks were appointed as deputy registrars until 1984, and no blacks were appointed as poll managers as late as 1986. Tr. 337, 277-78. Blacks filed a lawsuit in 1988 challenging continuing discrimination in the appointment of poll workers and managers in Bleckley County. NAACP of Cochran/Bleckley County v. Bleckley County, Civ. No. 88-32-MAC (M.D.Ga.).

[12] Black voter turnout is lower than white voter turnout. Tr. 321; Pl.Ex. 390; Tr. 321, 490.

clubs. App. 83-4.[13] These organizations, which frequently serve as forums for political candidates and political discourse, "give blacks and whites in Bleckley County a different exposure to the candidates running for local, state, and national office." App. 84.[14]

k. The sole precinct system serves as "a further barrier to active political participation by blacks." App. 83. There is only one polling place in the entire county – the Jaycee Barn in Cochran, which belongs to the Jaycees, an all white civic club. App. 65, 83.[15] Prior to 1984, when precincts were consolidated, there were a number of polling places "providing ready access to voters in the outlying areas of the county." App. 65 n.3.

l. The experiences of seasoned local black politicians showed that "as a practical political matter, blacks are unable to sponsor candidates for Bleckley County's sole commissioner office because such candidacies are futile." App. 79.

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[13] Personal preferences also perpetuate residential segregation. In the early 1980s a black employee of the Georgia Power Company contracted to buy a home in a white neighborhood in Cochran. Local whites opposed the sale and the black person decided to live elsewhere. Tr. 69-70, 277.

[14] For example, in 1989 state senator Joseph Kennedy was scheduled to speak at the Cochran Rotary Club in connection with his bid for lieutenant governor. An aide called defendant Holder prior to the engagement and asked him to "get as many blacks together" as possible to help promote Kennedy's candidacy. Tr. 512. Instead of inviting blacks to the Rotary Club, Holder arranged for the two blacks on the city council to meet separately with Kennedy at the public library.

[15] According to plaintiff Roberson, "a lot of people will not go there to vote because of [the racially exclusive membership policy of the Jaycees]." Tr. 83.

3. Political Cohesion

The court of appeals found that "the record evidence . . . coupled with the existence of racially polarized voting, conclusively reveal that the *Gingles* requirement of political cohesiveness has been satisfied." App. 85.

4. The Totality of Circumstances

The court of appeals held that plaintiffs had satisfied the test for proving a violation of Section 2 prescribed by the Court in *Thornburg v. Gingles, supra*, that at a minimum the burden was shifted to the county to offer rebuttal evidence, and that "[n]o meaningful rebuttal evidence" was offered. App. 86. The court also concluded that "the totality of the circumstances found in Bleckley County clearly reveal a situation where the electoral power of Bleckley County blacks has been abridged 'on account of race or color.' " *Id.*

Finding a violation of Section 2, the court of appeals reversed and remanded "for the imposition of a remedy," which "could well be modeled" after the existing single member district plan for the county board of education. App. 86. Having decided the case on a statutory ground, the court did not reach plaintiffs' constitutional vote dilution claim. App. 68 n.6.

The court of appeals denied the county's suggestion of rehearing en banc on May 27, 1992. App. 88. This Court granted the petition for writ of certiorari on March 1, 1993, but limited the question presented to "[w]hether the Court of Appeals erred in holding that governance by a single county commissioner, rather than a multi-member board of commissioners, is subject to challenge as dilutive

under § 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973." Joint Appendix 3.

SUMMARY OF ARGUMENT

Section 2 applies to plaintiffs' challenge to the at-large elected sole commissioner form of government in Bleckley County, whether or not the commissioner is regarded as a single member office. *Houston Lawyers' Association v. Attorney General of Texas*, 111 S.Ct. 2376, 2381 (1991) ("the 'single-member office' theory, even if accepted, cannot suffice to place an election for a single-member officeholder entirely beyond the coverage of § 2 of the Act"). Congress intended that "the Act be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination." *Chisom v. Roemer*, 111 S.Ct. 2354, 2368 (1991). There is no basis for excluding a legislative office, such as the commissioner, from the scope of Section 2.

The commissioner is not, however, a single member office. A single member office is one which exercises, either exclusively or primarily, executive powers, *The Federalist* No. 70, at 424 (A. Hamilton) (C. Rossiter, ed. 1961), *Dillard v. Crenshaw County, Ala.*, 831 F.2d 246, 251 (11th Cir. 1987), and which has never been regarded as being divisible. Such offices have *always* been held by one person. The commissioner, as the county governing authority with exclusive legislative power, is like a state general assembly or a city council.

A county governing authority has never been regarded in the United States as a single member office, such as a governor or mayor. Georgia is the only state which uses a sole commissioner; all other states use

multi-member county governing bodies. State law does not define the county governing authority as a single member office, nor require or favor a sole commissioner. The multi-member board of commissioners form of county government is overwhelmingly predominant in Georgia, with a five member board being the most common size.

There is nothing immutable under state law about the sole commissioner, as there is about a clerk of superior court or a sheriff. Individual counties have frequently switched back and forth between a sole commissioner and a board of commissioners. The county governing authority in Georgia is not a true single member office but simply a body the size of which may vary from one to three to five or more members.

Treating the commissioner as a single member office would have serious negative consequences for minority political participation. Discrimination prone jurisdictions would be encouraged to abolish their legislative bodies elected from districts, and consolidate all legislative and executive power in the hands of a single at-large elected executive official. In that way a bloc voting majority could dominate the election of all the county's legislative and executive positions. Unless the minority could prove that the change was intentionally discriminatory, it would be without any remedy for the denial of its equal voting rights. *City of Mobile v. Bolden*, 446 U.S. 55, 70 (1980).

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, would not be an adequate check on such retrogressive voting changes. Although a change in the size of an elected body would be covered by Section 5, *Lockhart v.*

United States, 460 U.S. 125, 131 (1983), a transfer of decisionmaking authority would not be. *Presley v. Etowah County Commission*, 112 S.Ct. 820, 830 (1992). A covered jurisdiction could escape Section 5 review simply by retaining its legislative body but transferring all the legislative powers of government to a single at-large elected executive official.

The commissioner system exists today in Bleckley County, not because the state has a compelling interest in limiting the office to one person, but because the electorate, which is majority white, and which the court of appeals found was racially polarized, rejected the referendum which would have established a fairly elected board of commissioners. Given the racial bloc voting that exists in Bleckley County, the requirement of a majority vote, and the concentration of all legislative and executive power in the hands of a single at-large elected official, the sole commissioner is the purest form of discrimination for a political system. It denies blacks the opportunity to elect *any* of the legislative or executive officials of the county. The sole commissioner is essentially a plantation form of county government, and is not entitled to deference under the Voting Rights Act.

The opinion of the court of appeals does not foreclose a county from having a chief executive or administrative official, even one elected at-large. The chair could be rotated among the members of the board of commissioners elected from districts, the county could hire a chief executive, or it could develop a clearly delimitated job description of an at-large elected chair that would guarantee no infringement on the work of the associate commissioners. None of the Section 2 challenges in other sole

commissioner counties in Georgia have resulted in the elimination of a chief executive officer.

The opinion of the court of appeals does not establish "proportional representation" as the standard for determining a Section 2 violation. The court applied the geographic compactness standard of *Thornburg v. Gingles*, *supra*, based upon the size of the county governing authority provided for by state law and custom. The general assembly has authorized a board of commissioners for Bleckley County consisting of a chairperson elected at-large and five members elected from single member districts, while a five member board of commissioners is the predominant configuration for county governing authorities in the state. The court of appeals did not establish an open-ended standard of proportional representation in Section 2 cases in which the size of a governing body could be infinitely expanded until a majority black district were created.

The commissioner is fundamentally different from a multi-member body, and poses an inherently greater threat to minority political participation, in that the discriminatory effect of racial bloc voting for a multi-member body can be ameliorated by redrawing district voting lines. The discriminatory effect of racial bloc voting for the commissioner can never be ameliorated by redistricting since there is only one "district" and the "district" is the entire county.

In finding racial bloc voting the court of appeals considered both election and non-election evidence. In doing so it followed the decisions of this Court and lower federal courts. *Thornburg v. Gingles*, *supra*, 478 U.S. at 57 n.25; *Nevett v. Sides*, 571 F.2d 209, 223 n.18 (5th Cir. 1978);

Lodge v. Buxton, 639 F.2d 1358, 1378 (5th Cir. 1981), *aff'd sub nom. Rogers v. Lodge*, 458 U.S. 613, 623, 627 (1982).

The court of appeals did not establish a new standard for political cohesion. It properly found that the record evidence, coupled with the existence of racially polarized voting, showed that the *Gingles* requirement of political cohesiveness had been satisfied. 478 U.S. at 56.

The factors identified by this Court in *Rogers v. Lodge*, *supra*, and *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264-68 (1977), as being probative of racial purpose show that the commissioner form of government in Bleckley County is being maintained intentionally to discriminate against blacks. The at-large system impacts more heavily upon blacks than whites. No black has ever been elected to a county office at-large, and given the existing polarization in the county it is unlikely that one ever will. The historical background of the adoption of the sole commissioner system shows that it was enacted at a time when blacks were excluded from the electorate and white supremacy was systematically maintained throughout the state.

The "sequence of events" shows that at-large elections in Bleckley County were made into a more secure mechanism for discrimination by the enactment of a majority vote requirement by the general assembly in 1964 to thwart black voter registration and dilute minority voting strength. The maintenance of the commissioner system is a substantive departure from the norm in that most counties in the state use a board of commissioners form of government. Indeed, the general assembly has authorized a board of commissioners for Bleckley County but the legislation was defeated in a countywide referendum. The foreseeable consequence of maintenance of the

present system is also "one type of quite relevant evidence of racially discriminatory purpose." S.Rep. No. 417, *supra*, at 27 n.108, *citing Dayton Board of Education v. Brinkman*, 443 U.S. 526, 536 n.9 (1979).

ARGUMENT

I. Section 2 Applies to Petitioners' Use of a Sole Commissioner Whether or not it Is Regarded as a Single Member Office

Bleckley County is plainly wrong at the outset in claiming that "vote dilution principles . . . do not apply . . . to single member offices." Brief for the Petitioners, p. 19. This Court squarely rejected such a contention in *Houston Lawyers' Association v. Attorney General of Texas*, 111 S.Ct. 2376, 2381 (1991), where it held that elections even for single member offices were not excluded "from the *coverage* of the § 2 results test" (emphasis in original).[16]

According to the Court, a Section 2 violation might be proved, for example, "if a particular practice or procedure, such as closing the polls at noon, results in an abridgment of a racial minority's opportunity to vote and to elect representatives of their choice." 111 S.Ct. at 2381. By way of further illustration, a Section 2 violation might be shown where the boundaries of the district of a single member office were drawn "to produce an unnatural

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[16] *Houston Lawyers' Association* effectively reversed the holding of the majority in Butts v. City of New York, 779 F.2d 141, 148 (2d Cir. 1985), relied upon by the county, Brief for the Petitioners, p. 19, that New York's 40% "near-majority" rule for election of the mayor, city council president, and comptroller could never violate Section 2 because these positions were single-member offices.

distribution of the voting power of different racial groups." *Id.* For these, and similar, reasons "[e]xempting elections for single-member offices from the reach of § 2 altogether can therefore not be supported." *Id.*

Section 2 "prohibits all States and political subdivisions from imposing *any* voting . . . standards, practices, or procedures which result in the denial or abridgment of the right to vote." *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986) (emphasis in original). *Accord, Chisom v. Roemer*, 111 S.Ct. 2354, 2368 (1991) (the Voting Rights Act "should be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination"); S.Rep. No. 417, 97th Cong., 2d Sess. 30 (1982) ("Section 2 remains the major statutory prohibition of all voting rights discrimination").

In addition, the legislative history of Section 2 makes clear that dilution of minority voting strength in the election of legislative offices was a central concern of the Voting Rights Act. Congress expressly adopted the standards for vote dilution developed in *White v. Regester*, 412 U.S. 755, 767 (1973), which guaranteed the equal right of minorities "to elect legislators of their choice." S.Rep. No. 417, *supra*, at 27. There is nothing in the language of Section 2, the legislative history, or the decisions of this Court that suggest any category of legislative officials should be entirely excluded from the reach of Section 2 based on the mere happenstance of the size of the legislative body.

Section 2 vote dilution principles clearly apply to plaintiffs' challenge to the at-large elected sole commissioner form of government in Bleckley County. The real issues presented are whether the office of the commissioner of Bleckley County is a true single member office,

or whether the state has a preclusive interest in the at-large method of electing the county governing authority. *Houston Lawyers' Association v. Attorney General of Texas, supra*, 111 S.Ct. at 2381. The answer to these questions is in the negative. The decision of the Eleventh Circuit was therefore correct.

A. The Commissioner Is not a Single Member Office

A single member office, such as president of the United States, or governor of Georgia, or sheriff of Bleckley County, or mayor of Cochran, is one in which the executive powers of government predominate and which has never been regarded as being divisible. Such offices have *always* been held by one person. The county governing authority, by contrast, is like a state legislature or a city council. The legislative powers of government are concentrated in it and it always is – except in a dozen or so counties in Georgia – a multi-member body which can be divided into smaller districts for election and representation purposes.

While this Court has never expressly defined or approved the term, single member offices have traditionally been regarded as those which exercise, either exclusively or primarily, executive powers. As noted in the Federalist papers:

> Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justness of their views have declared in favor of a single executive. . . . They have, with great propriety, considered energy as the most necessary qualification of [an executive], and have regarded this as most applicable to power in a single hand.

The Federalist No. 70, at 424 (A. Hamilton) (C. Rossiter, ed. 1961). On the other hand, those offices which exercise primarily legislative powers of government have traditionally been regarded as multi-member bodies. Again, as the Federalist papers note:

> a numerous legislature [is] best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

Id., at 424.

Consistent with the Federalist papers, the Eleventh Circuit has observed that single member offices "are most commonly limited to non-legislative functionaries," such as sheriffs, probate judges, and tax collectors. *Dillard v. Crenshaw County, Ala.*, 831 F.2d 246, 251 (11th Cir. 1987). "For these positions, at-large, non-proportional elections are inherent to their nature as single-person officers elected by direct vote." *Id.* Other offices identified by the lower federal courts as single member offices include lieutenant governor and vice president, *id.*, mayor, city council president, and comptroller, *Butts v. City of New York*, 779 F.2d 141, 148 (2d Cir. 1985), probate judge, *United States v. Dallas County Commission, Dallas County, Ala.*, 850 F.2d 1430, 1432 n.1 (11th Cir. 1988), and mayor, sheriff, and governor. *SCLC v. Siegelman*, 714 F.Supp. 511, 518 and n.19 (M.D.Ala. 1989).[17]

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[17] In Latin American Citizens Council #4434 v. Clements, 914 F.2d 620 (5th Cir. 1990), rev. sub nom. Houston Lawyers' Association v. Attorney General of Texas, supra, a majority of the court of appeals en banc held that Section 2 did not apply to the method of electing trial court judges. According to the concurring opinion of Judge Higginbotham, trial court judges were single-office holders immune from the statute "because each

There is no bright and absolute line between executive and legislative functions of government, and for that reason any definition of a single member office that turned exclusively on the functions or powers of the office would be impossible to apply in a consistent manner. Some traditional single member executive offices exercise legislative powers. Lieutenant governors and vice presidents are universally recognized as executive "single-office" positions, but they exercise legislative functions when they preside over legislative bodies and break tie votes. *Id.* As *Dillard v. Crenshaw County, Ala., supra*, recognized, "[e]ven on a constitutional level, where the separation is of utmost significance, there is, at the margin, great, and perhaps purposeful, ambiguity as to the separate realms [of executive and legislative powers]." 831 F.2d at 252 n.14, and cases cited therein.

What all single member offices, whether non-legislative functionaries or lieutenant governors, have in common is not simply that they are predominantly executive offices, but that they are not divisible. One lower court

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exercises his or her authority independently of the other judges serving in the same area or on the same court." Houston Lawyers' Association, supra, 111 S.Ct. at 2379-80. Judge Johnson, in his dissenting opinion, argued that judges were not single-member office holders, and that the concurrence's definition was no definition at all since "[e]very officeholder exercises complete authority over the duties of his or her office." Latin American Citizens Council #4434, supra, 914 F.2d at 661. In vacating and remanding, this Court did not attempt to resolve the dispute over definition between the concurrence and the dissent, but held simply that "the 'single-member office' theory, even if accepted, cannot suffice to place an election for a single-member officeholder entirely beyond the coverage of § 2 of the Act." 111 S.Ct. at 2381.

has concluded that the term single member office properly "refers to a situation where under no circumstances will there ever be more than one such position in a particular geographic voting area." *SCLC v. Siegelman, supra*, 714 F.Supp. at 518. Under this definition, mayors and governors are single member offices because "it is unheard of to have more than one." *Id. Accord, Latin American Citizens Council #4434 v. Clements*, 914 F.2d 620, 662 n.20 (5th Cir. 1990) (Johnson, J., dissenting, adopting "the *Siegelman* court's definition of single member office"), *rev. on other grounds sub nom. Houston Lawyers' Association v. Attorney General of Texas, supra.*

The commissioner of Bleckley County is not a true single member office. First, the county governing authority, which has "original and exclusive jurisdiction" over all county legislative functions, O.C.G.A. § 36-5-22.1(a), has never been regarded in the United States as a single member office, such as a governor or mayor. Georgia is the only state which uses a sole commissioner. *Supra*, at 4.

Second, state law does not define the county governing authority as a single member office. The Constitution of Georgia establishes certain single member offices which are, and always have been, required to be elected by the qualified voters of each county at-large, *i.e.*, clerk of the superior court, judge of the probate court, sheriff, tax receiver, tax collector, and tax commissioner. Art. IX, Sec. I, Para. III. The county governing authority is not included in this list.

Third, there is no preference under state law for a sole commissioner. The multi-member board of commissioners' form of county government is overwhelmingly predominant in Georgia, with a five member board being

the most common size. At the present time, only about a dozen counties still use the sole commissioner system.

Fourth, there is nothing immutable under state law about the sole commissioner, as there is about the clerk of superior court or sheriff. Individual counties have frequently switched back and forth between a sole commissioner and a board of commissioners. Carroll County, for example, had a five member commission in 1885. In 1894 the general assembly enacted a sole commissioner for the county. In 1903 the general assembly replaced the sole commissioner with a five member commission. In 1908 the county went back to a single member commission. In 1945 the county changed again, this time to a three member commission. In 1951, it changed back to a sole commissioner. The sole commissioner was in effect when the county was sued in 1986. *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1551 (11th Cir. 1987).

Telfair, Webster, and Wheeler Counties, former sole commissioner counties that were also sued under Section 2, *see supra*, at 4 n.5, all had boards of commissioners at one time or another in the past. Telfair County had a five member board of commissioners elected from single member districts in 1908, Ga. Laws 1908, p. 350, a sole commissioner in 1909, Ga. Laws 1909, p. 451, a three member board of commissioners elected from single member districts in 1913, Ga. Laws 1913, p. 439, a sole commissioner in 1916, Ga. Laws 1916, p. 508, a five member board of commissioners elected at-large in 1923, Ga. Laws 1923, p. 317, and a sole commissioner again in 1931. Ga. Laws 1931, pp. 566, 574.

Webster County adopted a board of commissioners in 1872 which it maintained for many years. Ga. Laws 1872, p. 479; Ga. Laws 1920, p. 641. When it was created in

1913, Wheeler County had a three member board of commissioners elected from single member districts. Ga. Laws 1913, p. 459; Ga. Laws 1920, p. 643.

There has never been an instance in which the office of clerk of superior court or sheriff was expanded and contracted in the manner of a county governing authority. That is because the former are true single member offices and the latter is not.

Fifth, the Georgia general assembly has expressly authorized a multi-member board of commissioners *for Bleckley County*, consisting of five members elected from single member districts and a chairperson elected at-large. Ga. Laws 1985, p. 4406. Implementation of the plan was defeated in a countywide referendum. As noted *supra*, not only is the county majority white but "the evidence conclusively establishes a pattern of racially polarized voting." App. 84-5.

In law and fact the county governing authority in Georgia is not a true single member office but simply a body the size of which may vary from one to three to five or more members. The county governing authority is therefore fundamentally different from a governor or mayor, of whom there can only be one.

The error of the county is in arguing that the *sole commissioner* cannot be subdivided. The real issue, however, is whether the *governing authority* can be subdivided. It clearly can be.

This Court rejected arguments similar to those raised by the county in this case in *Board of Estimate of City of New York v. Morris*, 489 U.S. 688 (1989). There, the board, which consisted of the five borough presidents of New York and the mayor, comptroller, and president of city council, claimed that one person, one vote principles did

not apply to it because it was "a unique body wielding non-legislative powers." *Id.* at 692. This Court held that because the board had significant "legislative functions" equality of population analysis was applicable. *Id.* at 696. Thus, even assuming there was no way to subdistrict the executive powers of the members of the board, their legislative powers were subject to equal protection standards. As for the argument that the unique form of the board was "supported by the city's history" and should not be disturbed, this Court held that the dilution of citizens' voting strength could not be justified "based on exigencies of history or convenience." 489 U.S. at 703 n.10. By the same token, the exigencies of history and convenience cannot justify the debasement of the voting strength of blacks in Bleckley County.

If the county's argument that the commissioner is a single member office were correct, then the at-large elected commission form of city government would also be immune from vote dilution challenge under Section 2 because each of several commissioners, such as the commissioner of public works or the commissioner of public safety, would be a single member office. No court has ever applied a single member office analysis to a legislative body such as a city commission, including this Court in *City of Mobile v. Bolden*, 446 U.S. 55 (1980). *See, e.g., Brown v. Board of Commissioners of Chattanooga, Tenn.*, 722 F.Supp. 380, 382 (E.D.Tenn. 1989) (invalidating at-large elections for city commission even though commissioners "serve as the administrative heads of their respective departments"); *Buchanan v. City of Jackson, Tenn.*, 683 F.Supp. 1515, 1522 (W.D.Tenn. 1988) (at-large elections for city commission violate Section 2 even though "[e]ach commissioner was assigned specific duties by the city

charter"); *McNeil v. City of Springfield, Ill.*, 658 F.Supp. 1015, 1020 (C.D.Ill. 1987) (striking down at-large elections for city commission even though each commissioner is "a specific executive office"); *Bolden v. City of Mobile, Ala.*, 542 F.Supp. 1050 (S.D.Ala. 1982) (invalidating at-large elections for the city commissioners of Mobile).

Adoption of the county's argument would have other serious negative consequences for minority political participation. Discrimination prone jurisdictions would be encouraged to abolish their legislative bodies elected from districts, and consolidate all legislative and executive power in the hands of a single at-large elected executive official. In that way a bloc voting majority could dominate the election of all the county's legislative and executive positions. *Thornburg v. Gingles, supra*, 478 U.S. at 48 (where voting is racially polarized "the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters"). Unless the minority could prove that the change was intentionally discriminatory, it would be without any remedy under the Constitution or Section 2 for the denial of its equal voting rights. *City of Mobile v. Bolden, supra*, 446 U.S. at 70 (requiring proof of racial purpose to establish a constitutional voting rights violation). The jurisdiction would have readily at hand the same non-racial reasons for the change asserted by the county in this case, that the single member office was "economical" and "efficient." Brief for the Petitioners, pp. 7-8.

Even Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, would not be an adequate check on such obviously retrogressive voting changes. *See, Beer v. United States*, 425 U.S. 130, 141 (1976) (voting changes that are

retrogressive are objectionable under the "effect" standard of Section 5). Although a change in the size of an elected body would be covered by Section 5, *Lockhart v. United States*, 460 U.S. 125, 131 (1983), a transfer of decisionmaking authority would not be. *Presley v. Etowah County Commission*, 112 S.Ct. 820, 830 (1992). A covered jurisdiction could escape Section 5 review simply by retaining its legislative body but transferring all the legislative powers of government to a single at-large elected executive official. Under the circumstances there could be no review of the transfer of power under Section 5, and no challenge to the discriminatory at-large method of electing the sole official under the effect standard of Section 2. Such a result would be intolerable under the Voting Rights Act, which was intended to eradicate all forms of discrimination in voting.

The county claims that the sole commissioner is "the purest form of democracy for a political system." Brief for the Petitioners, p. 20. To the contrary, given the racial bloc voting that exists in Bleckley County, the requirement of a majority vote,[18] and the concentration of all legislative and executive power in the hands of a single at-large elected official, the sole commissioner is in reality the purest form of discrimination for a political system. It denies blacks the opportunity to elect *any* of the legislative or executive officials of the county. There is very little

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[18] This Court has recognized that a majority vote requirement "enhanced the opportunity for racial discrimination," White v. Regester, 412 U.S. 755, 766 (1973), and that "[i]n the context of racial bloc voting . . . the [majority vote] rule would permanently foreclose a black candidate from being elected to an at-large seat." City of Port Arthur v. United States, 459 U.S. 159, 167 (1982).

that is democratic about the sole commissioner. It is essentially a plantation form of county government.

B. The State's Interest Is not Preclusive

1. Racial Bloc Voting Maintains the Commissioner

The commissioner system exists today in Bleckley County, not because the state requires it or has a compelling interest in limiting the office to one person, but because the electorate, which is majority white, and which the court of appeals found was racially polarized, rejected the referendum which would have established a board of commissioners. Polarized voting inevitably calls into question not simply the fairness of its maintenance but the legitimacy of the commissioner in Bleckley County. *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 936-37 (4th Cir. 1987) ("[i]t is crucial to the legitimacy of the political system that questions about its fairness be answered unambiguously," *citing United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938)). The commission is not entitled to judicial deference.

To argue that, notwithstanding the devastating impact of racial bloc voting in Bleckley County, the commissioner is immune from challenge under Section 2 would be to ignore the central point of vote dilution analysis, as well as an underlying rationale for Section 2. As this Court has noted, the theoretical basis for minority vote dilution, which Section 2 was designed to redress, is that "significant white bloc voting" impairs the ability of minority voters to elect their chosen representatives. *Thornburg v. Gingles, supra*, 478 U.S. at 48 n.15. In Bleckley County "significant white bloc voting" maintains the commissioner system, and impedes the ability of blacks

to elect candidates of their choice. The state thus has no legitimate, let alone preclusive, interest in at-large voting for the commissioner of Bleckley County.

2. Granting Plaintiffs Relief Does not Mean the County May not Retain a Chief Executive Officer

Any concern that the opinion of the Eleventh Circuit would foreclose a county from having a chief executive or administrative official, even one elected at-large, or would lead in other cases to multiple mayors or vice presidents is unfounded. As the court noted in *Dillard v. Crenshaw County, Ala., supra*, where at-large elections are shown to dilute minority voting strength a county has several alternatives in retaining executive functions in the hands of a single person. The chair could be rotated among the members of the board of commissioners elected from districts, the county could hire a chief executive, or it could develop "a clearly delimitated job description [of an at-large elected chair] along with other safeguards that would guarantee no infringement on the work of the associate commissioners." 831 F.2d at 253. Nothing in the opinion of the court of appeals or Section 2 prohibits any of these, or other, remedial options.

It is worthy of note that none of the Section 2 challenges in other sole commissioner counties in Georgia have resulted in the elimination of a chief executive officer. *See, City of Carrollton Branch of NAACP v. Stallings*, Civ. No. C84-122N (N.D.Ga. Sept. 17, 1988) (providing for six commissioners elected from single member districts and a chair elected at-large "serving as the full time chief administrative officer of the County"), Appendix to Respondents' Brief App. 1 (hereinafter "Brief App.");

Clark v. Telfair County, Georgia Commission, Civ. No. CV 387-25 (S.D.Ga. Oct. 26, 1988) (providing for a five member board of commissioners elected from single member districts, a chair elected by the board, and the hiring of an administrative officer known as the superintendent of roads and bridges), Brief App. 11; *Nealy v. Webster County, Georgia Commission*, Civ. No. 88-203-ALB-AMER (M.D.Ga. Mar. 16, 1990) (establishing a four member board of commissioners, with a three member legislative component and an at-large elected chair with essentially executive duties who votes only in the event of a tie), Brief App. 23; and, *Howard v. Commissioner of Wheeler County, Georgia*, Civ. No. CV390-057 (S.D.Ga. Jan. 13, 1993) (providing for a board of commissioners elected from single member districts, with a "chief executive" chosen from among the three members), Brief App. 33.[19]

The district court has the duty in the first instance of fashioning a suitable remedy for a Section 2 violation. The remedy may not be the same in every case, but will depend upon the individual facts and circumstances of the particular jurisdiction. Any remedy must be "commensurate with the right that has been violated," and must "fully provide . . . equal opportunity for minority citizens to participate and to elect candidates of their choice." S.Rep. No. 417, *supra*, at 31. Nothing in any of the remedial orders in other sole commissioner cases, nor in the opinion of the court of appeals in this case, is inconsistent with these principles or requires the elimination of

[19] Twenty copies of the exhibits to the opinion of the district court in Howard v. Commissioner of Wheeler County, Georgia, supra, containing a geographic description of districts, have been lodged with the Clerk of this Court.

a chief executive officer. The state thus has no overriding or preclusive interest in maintaining the at-large election of the commissioner.

II. The Court of Appeals Did not Require Proportional Representation

The opinion of the court of appeals does not, as the county contends, establish "proportional representation" as the standard for determining a Section 2 violation, or render "meaningless" the requirement of geographic compactness. Brief for the Petitioners, pp. 24, 26. To the contrary, the court faithfully applied the analysis in *Thornburg v. Gingles, supra*, including the requirement of geographic compactness based upon the size of the county governing authority provided for by state law and custom.

A. The Red Herring of Proportional Representation

Section 2(b) of the Voting Rights Act, 42 U.S.C. § 1973(b), contains a disclaimer that nothing in the statute establishes "a right to have members of a protected class elected in numbers equal to their proportion in the population." According to the Senate report, the purpose of the disclaimer was to make clear that minorities could not establish a violation merely by showing that they had not been elected to office in proportion to their numbers in the population. S.Rep. No. 417, *supra*, at 23-4, 27, 31. The decision of this Court in *Thornburg v. Gingles, supra*, 478 U.S. at 46, is to the same effect: "the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation."

The court of appeals in this case clearly did not apply a proportional representation standard. It did not rule that the commissioner violated Section 2 merely because blacks had not been elected to the position. Instead, it used the totality of circumstances analysis provided for in *Gingles*. The county's proportional representation argument is a red herring.

B. Gingles and the Geographic Compactness Standard

In *Thornburg v. Gingles, supra,* 478 U.S. at 46, the plaintiffs alleged in their complaint that "the legislative decision to employ multi-member, rather than single member, districts in the contested jurisdictions" diluted their voting strength in violation of Section 2. Under the circumstances it was appropriate for this Court to require plaintiffs to prove that their injury was as they stated it to be, and that they could in fact constitute a majority in one or more single member districts based upon the existing number of seats. As the Court reasoned, if the minority is not sufficiently compact to constitute a majority in a single member district "the *multi-member form* of the district cannot be responsible for minority voters' inability to elect its candidates." 478 U.S. at 50 (emphasis in original).

Here, plaintiffs do not challenge an existing multi-member form but an at-large elected commissioner form of government. They claim that in the absence of the challenged structure – in a multi-member body – they could elect a representative of their choice. Given the nature of the claim, it would be a Catch-22 to require plaintiffs to prove, in the name of *Gingles*, that they were a majority in the district from which the commissioner is

elected. Such a requirement would be tantamount to saying that plaintiffs could not challenge the method of election of the commissioner under Section 2, and would be contrary to the decision in *Houston Lawyers' Association v. Attorney General of Texas, supra,* 111 S.Ct. at 2381.

The arbitrary application of the *Gingles* compactness standard in this case, *i.e.*, that plaintiffs prove they could be a majority in the existing district, would be unwarranted for the additional reason that the commissioner is fundamentally different from a multi-member body, and poses an inherently greater threat to minority political participation. The discriminatory effect of racial bloc voting for a multi-member body can be ameliorated by redrawing district voting lines. *Voinovich v. Quilter, supra,* 113 S.Ct. at 1156 ("[p]lacing black voters in a district in which they constitute a sizeable and therefore 'safe' majority ensures that they are able to elect their candidates of choice"). By contrast, the discriminatory effect of racial bloc voting for the commissioner can never be ameliorated by redistricting since there is only one "district" and the "district" is the entire county.

The *Gingles* compactness standard was developed in the context of a challenge to an at-large multi-member redistricting plan. The standard ensures that a minority will have an equal opportunity to elect at least some of the members of a challenged body under a single member system. 478 U.S. at 50 n.17 (majority black districts allow minorities the opportunity "to elect representatives of their choice"). The procrustean application of the *Gingles* compactness standard argued for by the county in this case would only ensure that blacks would never have the equal opportunity to elect representatives of their choice to any legislative or executive position in Bleckley

County. Such a result would be totally inappropriate and cannot be squared with *Gingles* or the Voting Rights Act.

C. Geographic Compactness and the Commissioner Form of Government

The compactness requirement of *Gingles* is applicable to a challenge to a sole commissioner size of government, and the court of appeals did not, as the county claims, disregard it. Plaintiffs were required to show, not that they could be a majority countywide, but that they could be a majority "within a restructured form of the challenged system when the *existing structure* is being challenged as dilutive." App. 74 (emphasis in original). *Accord, Carrollton Branch of NAACP v. Stallings, supra,* 829 F.2d at 1563 (*Gingles* requires plaintiffs to show that they "are sufficiently numerous and compact to constitute a majority in a single member district, if single member districts were created out of the one county district").

The county's claim that there is no limitation on the restructuring that would be permitted under the opinion of the court of appeals is incorrect. Restructuring is ordinarily limited to what is authorized by state law. *Voinovich v. Quilter, supra,* 113 S.Ct. at 1157 ("the federal courts are bound to respect the States' apportionment choices unless those choices contravene federal requirements").

Here, the general assembly has authorized a board of commissioners for Bleckley County consisting of a chairperson elected at-large and five members elected from single member districts. There is no dispute that blacks could constitute a majority in one of the single member

districts. In addition, a five member board of commissioners is the predominant configuration for county governing authorities in the state. Finally, the court of appeals based its geographic compactness analysis on "the five districts currently found in Bleckley County [used by the board of education]." App. 74. The court of appeals did not establish an open-ended standard of proportional representation in Section 2 cases in which the size of a governing body could be infinitely expanded until a majority black district were created. Instead, the court of appeals used as a benchmark for determining compactness the size of the county governing authority dictated by the state's own "apportionment choices." *Id.*[20]

Even in the absence of a clearly defined state benchmark, a court would have inherent equitable power to vary the size of a challenged governing body within the limits of reasonableness in order to comply with federal law. In *Sixty-Seventh Minnesota State Senate v. Beens,* 406 U.S. 187 (1972), the district court, in fashioning a remedy for a one person, one vote violation, reduced

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[20] The opinion of the court of appeals is also consistent with the decision in McNeil v. Springfield, Illinois, supra, 658 F.Supp. at 1016, in which the plaintiffs challenged the "structure of the government of the City of Springfield." Under the existing structure, a mayor and four commissioners were elected at-large, and single member districts were prohibited. State law also authorized the mayor-aldermanic, strong mayor-aldermanic, and council-manager forms of city government elected from ten districts or wards. Blacks could not be a majority in a four or five district plan, but they could be a majority in a ten district plan. Id. at 1022. Based upon these facts the court concluded that blacks were "geographically compact" within the meaning of *Gingles,* and invalidated the existing commission form of government. Id. at 1022-23, 1033.

the size of the state senate from 67 to 35 members, and reduced the house from 135 to 105 members. This Court reversed because of the extent of the change imposed, and because the district court had bypassed state policy. The Court acknowledged, however, the power of a court to vary the size of a challenged body.

> We do not disapprove a court-imposed minor variation from a State's prescribed figure when that change is shown to be necessary to meet constitutional requirements.

406 U.S. at 199. In a dissenting opinion Justice Stewart agreed that "there is no rigid and absolute limit on a court's equitable discretion to order changes in the size of legislative bodies in order to remedy an unconstitutional apportionment. Every case is different, and these questions are inevitably questions of degree." 406 U.S. at 203.

Although *Sixty-Seventh Minnesota State Senate v. Beens, supra*, involved a constitutional challenge, a court would have even greater remedial power in implementing the Voting Rights Act to combat continuing discrimination in voting. *City of Rome v. United States*, 446 U.S. 156, 176-77 (1980) (in enforcing the Fourteenth and Fifteenth Amendments Congress may prohibit practices that are not in themselves unconstitutional). Section 2 does not in any case mandate the use of any particular voting practices, but only that the practices which are used be racially fair.[21]

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[21] Applying a standard of reasonableness, or "degree," based upon the facts and circumstances of a given case may prove a difficult task. However, as this Court has said in the context of applying Section 2 to the method of electing judges, the task of applying Section 2 in such instances, "difficult as it may prove to be, cannot justify a judicially created limitation on the coverage of the broadly worded statute, as enacted and amended by Congress." Chisom v. Roemer, supra, 111 S.Ct. at 2368.

The cases relied upon by the county are either inapposite, or do not support the county's position. The county claims that in *Gregory v. Ashcroft*, 111 S.Ct. 2395 (1991), this Court "advised against a construction of Section 2 that requires state and local jurisdictions to increase the number of officials elected to particular offices." Brief for the Petitioners, p. 38. To the contrary, *Gregory* involved a state's mandatory retirement requirement for judges, and did not even mention Section 2. The county is also wrong that the Court issued a similar warning in *Whitcomb v. Chavis*, 403 U.S. 124 (1971). There was no issue in *Whitcomb* involving an increase in the size of the legislature.[22]

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[22] The reliance by the county on lower court decisions is similarly misplaced. Neither Romero v. City of Pomona, 883 F.2d 1418, 1420 (9th Cir. 1989), nor McNeil v. Springfield Park District, 851 F.2d 937, 939, 946 (7th Cir. 1988), was a challenge to a sole commissioner or to the form of a governing body, and in neither was the expansion in size of the governing body authorized by state law. In Overton v. Austin, 871 F.2d 529, 536 (5th Cir. 1989), the district court, although it ruled against the plaintiffs on their Section 2 claim, held that *Gingles*, without regard to alternative sizes authorized by state law, permitted an expansion of the Austin city council from six to eight members to satisfy the geographic compactness standard. A majority of the panel affirmed, without disturbing the findings of geographic compactness made by the district court. Thus, notwithstanding the concurring opinion of Judge Jones, *Overton* actually sanctions a restructuring that goes beyond that authorized by the court of appeals in this case.

III. The Court of Appeals' Finding of Vote Dilution Was Correct

Despite the fact that the grant of certiorari in this case was limited to a jurisdictional issue, the county insists upon arguing the merits of the plaintiffs' vote dilution claim. Plaintiffs will respond briefly to the improper arguments of the county.

A. Racial Bloc Voting Exists in Bleckley County

The county claims that in finding racial bloc voting the court of appeals improperly relied upon "anecdotal testimony alone." Brief for the Petitioners, pp. 31, 33 n.25. Nothing could be further from the truth.[23]

The court of appeals in fact considered a great deal of election data. It considered regression analysis data, App. 79, exit poll data, App. 79-80, the defeat of black candidates in city and county at-large elections, and the success of black candidates in city and county district elections, App. 66 n.5, 78 n.13, 81, and elections involving white candidates in which race was an issue. App. 82.[24] It also considered other evidence deemed by Congress and

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[23] Although the county criticizes the court of appeals for relying upon anecdotal testimony, the county has no reservations about relying upon – and even distorting – such testimony itself. It claims, for example, that David Walker, president of the local NAACP chapter, testified "that a qualified black candidate for county commissioner could win." Brief for the Petitioners, p. 23 n.18. That is not a fair or accurate statement of what Mr. Walker said. What he actually said was that Basby would "probably" win running against a "person that's not qualified. But a person that's the same way, he'd lose." Tr. 341.

[24] The county is plainly in error when it says that plaintiffs did not "analyze *any* elections involving white candidates." Brief for the Petitioners, p. 34 (emphasis in original).

the courts as being probative of racial bloc voting, such as the history of segregation, App. 83, discrimination in voting and "in public life and government," *id.*, the minority's depressed socio-economic status, *id.*, present day barriers to political participation, App. 65, 83,[25] segregation of civic and other organizations, App. 84, the views of experienced local politicians, App. 79, and the depressed level of black candidacies for countywide offices. App. 79.

Gingles provides that "[w]here a minority group has never been able to sponsor a candidate, courts *must* rely on other factors [than elections] that tend to prove unequal access to the electoral process." 478 U.S. at 57 n.25 (emphasis supplied). Moreover, where the minority has begun just recently to sponsor candidates, "the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim." *Id.*[26]

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[25] The county tries to discount the use of the Jaycee Barn as the county's only polling place by breezily claiming that "[n]o evidence was introduced to show that any voter has been prevented from voting because of the site of the polling place." Brief for Petitioners, p. 31 n.24. Evidence *was* presented that "a lot of people will not go there to vote because of [the racially discriminatory membership policies of the Jaycees]." Tr. 83. The injury to blacks caused by use of the Jaycee Barn is not limited to the fact that blacks are often deterred from voting. Its use also erodes the confidence that blacks have in the fairness of the electoral process, and serves to further enhance racial isolation and polarization. See, United States v. Marengo County Commission, supra, 731 F.2d at 1570; Harris v. Siegelman, 695 F.Supp. 517, 526 (M.D.Ala. 1988).

[26] Plaintiffs believe footnote 25 in *Gingles* means both that: (1) racial bloc voting may be proved by factors other than election data; and, (2) where racial bloc voting cannot be shown

The *Gingles* requirement that where election data is sparse or unavailable a court must look at other factors in determining the existence of polarized voting or access to the electoral process is simply a restatement of pre-existing voting rights case law which was incorporated into Section 2 by the 1982 amendments of the Voting Rights Act. As this Court noted in *Gingles*, 478 U.S. at 44 n.8, "amended § 2 was designed to restore the 'results' test – the legal standard that governed voting discrimination cases prior to our decision in *Mobile v. Bolden*."

One of the appellate court decisions applying the results test incorporated into Section 2 by Congress was *Nevett v. Sides*, 571 F.2d 209, 223 n. 18 (5th Cir. 1978). S.Rep. No. 417, *supra*, at 23 n.79; Voting Rights Act Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary United States Congress Second Session on S.53, S.1761, S.1975, S.1992, and H.R. 3112, 97th Cong., 2d Sess. 1216-26 (1982) (listing and analyzing applicable appellate court decisions). *Nevett* held that under a "results" analysis:

> Bloc voting may be indicated by a showing . . . of the 'existence of past discrimination in general . . . , large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts.' . . . Of course, bloc voting may be demonstrated by more direct means as well, such as statistical analyses, . . . or the consistent lack of success of qualified black candidates.

Accord, United States v. Marengo County Commission, 731 F.2d 1546, 1567 n.34 (11th Cir. 1984).

Under Section 2 the lack of black candidacies is both evidence of and a response to polarized voting. In *McMillan v. Escambia County*, 748 F.2d 1037, 1045 (11th Cir. 1984), the court held that "the lack of black candidates is a likely result of a racially discriminatory system." Other courts applying the results test have reached similar conclusions that a depressed level of minority candidacies is evidence of polarization. *See, e.g., Citizens for a Better Gretna v. City of Gretna*, 636 F.Supp. 1113, 1119-20, 1135 (E.D.La. 1986); *Jeffers v. Clinton*, 730 F.Supp. 196, 213 (E.D.Ark. 1989); *Hendrix v. McKinney*, 460 F.Supp. 626, 632 (M.D.Ala. 1978); *Wilkes County, Ga. v. United States*, 450 F.Supp. 1171, 1174 (D.D.C. 1978).[27]

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because a system is so discriminatory that the minority has never participated in elections as voters or candidates, or where the evidence is simply sparse, a Section 2 violation can still be established by proof that the minority is denied equal access to the electoral process based upon the totality of circumstances identified in the legislative history of Section 2. See, S.Rep. No. 417, supra, at 29. As the court of appeals found, the evidence in this case "conclusively establishes a pattern of racially polarized voting." App. 85-5. Apart from that, the totality of circumstances support a violation of the equal access standard of Section 2 identified in footnote 25.

[27] While the plurality in *Gingles* held that "only the race of the voter, not the race of the candidate, is relevant to vote dilution analysis," 478 U.S. at 68, all the elections relied upon by the Court in finding racial bloc voting were black-white contests, in which the race of the candidate was necessarily taken into account. 478 U.S. at 80-3. Lower courts have interpreted *Gingles* as meaning that "the race of the candidate is in general of less significance than the race of the voter – but only within the context of an election that offers voters the choice of supporting a viable minority candidate." Citizens for a Better Gretna v. City of Gretna, La., 834 F.2d 496, 502 (5th Cir. 1987). Accord, Campos v. City of Baytown, Texas, 840 F.2d 1240, 1245 (5th Cir. 1988). The all white contests in Bleckley County that

In finding that voting was racially polarized, the court of appeals took into account the fact that black candidates were elected in municipal elections after the City of Cochran adopted districts. That blacks consistently lose in county and city elections at-large, but win in county and city elections from majority black districts, is highly relevant evidence that voting is along racial lines. In *Lodge v. Buxton*, 639 F.2d 1358, 1378 (5th Cir. 1981), the court of appeals, in making a finding that voting was racially polarized in Burke County, Georgia, and where there was no statistical evidence, found it "of particular significance . . . that in the one city election in which city councilmen were elected from single-member districts, a Black was elected." The court of appeals' finding that voting was polarized was affirmed by this Court *sub nom. Rogers v. Lodge*, 458 U.S. 613, 623, 627 (1982), in which the Court applied the *White v. Regester, supra*, totality of circumstances analysis.

The testimony of experienced local politicians is also highly relevant under Section 2 in showing the existence or not of racial bloc voting. In *Gingles* the Court relied not only upon statistical analysis, but "the testimony of lay witnesses" to prove that voting was racially polarized. *Gingles v. Edmisten*, 590 F.Supp. 345, 367 (E.D.N.C. 1984), *aff'd sub nom. Thornburg v. Gingles, supra*, 478 U.S. at 41.

Gingles and the other decisions embodying the results standard adopted by Congress clearly show that the court of appeals applied correct legal standards, and properly took into account both election and non-election

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did not offer voters the choice of supporting a viable minority candidate are of little use in determining the existence of racially polarized voting.

evidence in finding that voting in Bleckley County was racially polarized. That finding is not clearly erroneous. *Thornburg v. Gingles, supra*, 478 U.S. at 79.

B. The Court of Appeals Correctly Found that Blacks Were Politically Cohesive

The county claims that the court of appeals established "a new standard" for proof of political cohesion. Brief for the Petitioners, p. 36. To the contrary, the court of appeals faithfully followed the *Gingles* test for political cohesion. According to *Gingles*, 478 U.S. at 56, proof of racial bloc voting "is one way of proving political cohesiveness." In this case, the court of appeals found that "the record evidence . . . coupled with the existence of racially polarized voting, conclusively reveal that the *Gingles* requirement of political cohesiveness has been satisfied." App. 85. There is no basis for the county's claim that the court of appeals established a new standard for political cohesion.

IV. The At-Large Elected Commissioner Is Unconstitutional

The court of appeals, having decided the case on a statutory ground, did not reach plaintiffs' constitutional claim that the at-large elected commissioner was unconstitutional. App. 68 n.6, *citing Escambia County v. McMillan*, 466 U.S. 48, 51 (1984). However, a finding of unconstitutionality, should it be necessary to reach the issue, would be a basis upon which this Court could affirm the decision of the court of appeals. *Hankerson v. North Carolina*, 432 U.S. 233, 240 n.6 (1977) (a party may make any argument presented below which supports the judgment of the lower court).

In *Rogers v. Lodge, supra*, decided a few days after the 1982 amendment of the Voting Rights Act, this Court affirmed a finding of a constitutional violation in the use of at-large elections in Burke County, Georgia even though there was no evidence that the system was adopted with a discriminatory purpose, and no direct proof of invidious purpose in the maintenance of the challenged system. *Lodge v. Buxton, supra*, 639 F.2d at 1367 n.21, 1373, *aff'd sub nom. Rogers v. Lodge, supra*. A discriminatory purpose in *Lodge* was established by proof of racial bloc voting; the failure of black candidates to win elections; past discrimination against blacks in voting, education, and other areas; a depressed minority socio-economic status and voter registration rates; the large size of the election district; the requirement of running for a designated seat; and, the lack of a subdistrict residency requirement. 458 U.S. at 622-27. Virtually all the *Lodge* factors are present in this case, and support a finding of intentional discrimination in the use of the sole commissioner system.

The senate and house reports that accompanied the 1982 amendments of Section 2 adopted the standard for proving discriminatory purpose established in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264-68 (1977). According to the senate report,

> plaintiff may establish discriminatory intent for purposes of this section, through direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant's actions which 'is one type of quite relevant evidence of racially discriminatory purpose.'

S.Rep. No. 417, *supra*, at 27, n.108. The house report, also citing *Arlington Heights*, provides that

> plaintiffs would not be required to prove that a discriminatory purpose was the sole, dominant, or even the primary purpose for the challenged practice or procedure, but only that it has been a motivating factor in the challenged decision.

H.R.Rep. No. 227, 97th Cong., 1st Sess. 30, n.101 (1981).

According to *Arlington Heights*, determining whether racial purpose is a "motivating factor" requires a sensitive inquiry into such direct and circumstantial evidence of intent as may be available. Aside from specific, smoking gun, evidence, *Arlington Heights* identifies various factors that are probative of racial intent: (1) whether the impact of the official action bears more heavily on one race than the other; (2) the historical background of the decision, particularly if it was made in the context of a series of official actions taken for invidious purposes; (3) the sequence of events leading up to the challenged decision; (4) any departures from the normal procedural sequence; (5) substantive departures, particularly if the factors usually considered important by the decision-maker strongly favor a decision contrary to the one reached; and (6) the legislative or administrative history, including contemporaneous statements by members of the decisionmaking body.

Applying the *Arlington Heights* factors to the evidence in this case shows that Bleckley County's at-large elected, sole commissioner form of government has been and is being maintained for the racially discriminatory purpose of diluting black voting strength. The at-large system impacts more heavily upon blacks than whites. No black has ever been elected to a county office at-large,

and given the racial bloc voting in the county it is unlikely that one ever will. The historical background of the adoption of the sole commissioner system shows that it was enacted at a time when blacks were excluded from the electorate and white supremacy was systematically maintained throughout the state.

The "sequence of events" shows that at-large elections in Bleckley County were made into a more secure mechanism for discrimination by the enactment of a majority vote requirement by the general assembly in 1964 to thwart black voter registration and dilute minority voting strength. In *Dillard v. Crenshaw County*, 640 F.Supp. 1347 (M.D.Ala. 1986), for example, the court invalidated at-large elections in several Alabama counties based upon evidence that a *statewide* numbered place law enacted in 1961 had tainted at-large systems wherever they existed in the state. According to the court:

> regardless of the reasons for which the at-large systems were put into place in the various counties . . . the numbered place laws have inevitably tainted these systems wherever they exist in the state. In adopting the laws, the state reshaped at-large systems into more secure mechanisms for discrimination. And as the evidence makes clear, this reshaping of the systems was completely intentional.

640 F.Supp. at 1357. The finding by the district court that the at-large method of elections violated Section 2 was affirmed on appeal. *See, Dillard v. Crenshaw County, Alabama, supra*, 831 F.2d at 252, *affirming in part, remanding in part*, 649 F.Supp. 289 (M.D.Ala. 1986).

The majority vote requirement in Georgia was enacted by the general assembly in 1964 to reshape at-large elections into more secure mechanisms for discrimination wherever they existed, including in Bleckley County. Under the circumstances, the at-large system now being used is the product of intentional discrimination and violates Section 2. *Accord, Dillard v. Baldwin County Board of Education*, 786 F.Supp. 1459, 1468 (M.D.Ala. 1988) (invalidating county at-large elections because they were "a product of . . . racially discriminatory efforts of the Alabama legislature").

The maintenance of the commissioner system is a substantive departure from the norm in that most counties in the state use a board of commissioners form of government. Indeed, the general assembly has authorized a board of commissioners for Bleckley County but the legislation was defeated in a countywide referendum. Blacks in Bleckley County have no meaningful role in the selection of the county commissioner. Such a result is the foreseeable consequence of maintenance of the present system, which is "one type of quite relevant evidence of racially discriminatory purpose." S.Rep. No. 417, *supra*, at 27 n.108, *citing Dayton Board of Education v. Brinkman*, 443 U.S. 526, 536 n.9 (1979).

The factors relied upon by the Court in *Rogers v. Lodge* and identified in *Arlington Heights* indicate that the at-large elected, sole commissioner form of government in Bleckley County is being maintained with a racially discriminatory purpose.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted,

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PLAINTIFF'S EXHIBIT 204

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

CITY OF CARROLLTON BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, VOTER EDUCATION PROJECT CITY OF CARROLLTON, MARVIN WALKER, ROBERT SPRINGER, JAMES WYATT and JEFF LONG, Plaintiffs vs. TRACEY STALLINGS, individually and in his official capacity as MAYOR OF THE CITY OF CARROLLTON; N. T. LANXTON, ROGER ROSSOMONDO, L. COLLINS, and J. CARL WILLIAMSON, JR., individually and in their official capacities as members of the CARROLLTON CITY COUNCIL; HORRIE DUNCAN, individually and in his offical capacity as CARROLLTON COUNTY COMMISSIONER; PATTI BROWN, A. G. AULT, CAROL MARTIN, JAMES GAMBLE and TOMMY GREER, individually and in their offical capacities as members of the CARROLL COUNTY ELECTION BOARD, Defendants	CIVIL ACTION FILE NO. C84-122N (Filed Sept. 17, 1988)

CONSENT DECREE

Plaintiffs initiated this action under the First, Thirteenth, Fourteenth and Fifteenth Amendments of the Constitution of the United States and of the Voting Rights Act of 1965, as amended, 42 U.S.C., Sections 1973 *et seq.* (hereinafter referred to as "The Voting Rights Act"), and prayed for declaratory and injunctive relief concerning the methods of electing the Commissioner of Carroll County.

Defendants (Who for the purpose of this Order include only the Commissioner of Carroll County and the Carroll County Election Board) have denied that Plaintiffs are entitled to the relief sought.

The Plaintiffs and Defendants are desirous of implementing a solution to the subject matter of this action for the purposes of resolving this dispute and establishing a method for the future election of a multi-member Board of Commissioners of Carroll County. This Court has jurisdiction of the parties and the subject matter of this action, and the parties have agreed to the electing the Commissioner of Carroll County.

Defendants (Who for the purpose of this Order include only the Commissioner of Carroll County and the Carroll County Election Board) have denied that Plaintiffs are entitled to the relief sought.

The Plaintiffs and Defendants are desirous of implementing a solution to the subject matter of this action for the purposes of resolving this dispute and establishing a method for the future election of a multi-member Board

of Commissioners of Carroll County. This Court has jurisdiction of the parties and the subject matter of this action, and the parties have agreed to the entry of this Consent Decree. Based upon the inherent equitable powers of this Court and the consent of the parties hereto, this Court hereby establishes a Board of Commissioners of Carroll County whose members shall be elected on the basis, of and in accordance with the provisions of this Consent Decree as hereafter stated.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1.

That Defendants agree under the terms of this Order not to further enforce the method of electing the sole of Commissioner of Carroll County as set forth in Georgia Laws 1983, p. 46-56 or any other law.

2.

That there is hereby established a Board of Commissioners of Carroll County who shall consist of seven members. All future elections shall be conducted on the basis of electing one person from the County at large and six persons from single member voting districts, to be know [sic] as Election District Number 1, Election District Number 2, Election District Number 3, Election District Number 4, Election District Number 5 and Election District Number 6. Each such district is particularly described and shall be as set forth in Exhibit "A" attached hereto and made a part hereof, and each such district shall be as drawn in Exhibit "B", attached hereto.

3.

That the at-large member of the Board of Commissioners shall be elected from the County at large and shall serve as the Chairman of the Commission employed by the County and serving as the full time chief administrative officer of the County.

4.

That the General Election scheduled for November 2, 1988, shall be conducted as scheduled and that the person so elected shall serve as the first Chairman of the Carroll County Board of Commissioners until the expiration of his normal term of office and until he is succeeded, pursuant to the terms of this Consent Decree, or other applicable provisions of law, and shall possess and have the duty and responsibility of exercising all of the power given him by law until so succeeded. The Chairman shall have the authority to serve as the governing authority of the County until such time as the remaining members of the Commission take office as provided herein.

5.

The pertinent demographic information for the six Election Districts described in Exhibit "A" and drawn on Exhibit "B", attached hereto, according to the 1980 United States Census of Population, is as follows:

DISTRICT	TOTAL POPULATION	PERCENTAGE DEVIATION	TOTAL BLACK POPULATION	PERCENTAGE BLACK
1	8,465	-9.86%	4,352	51.41%
2	9,933	5.87%	1,600	16.11%
3	9,692	3.30%	620	6.40%
4	9,878	5.29%	679	6.87%
5	9,323	-.63%	1,260	13.51%
6	9,055	-3.49%	1,168	12.90%

6.

The members of the Carroll County Board of Commissioners elected from Election Districts 1 through 6 shall be required to reside within the district and shall be elected in any election whether it be primary, run-off, special or general election, solely by the voters who reside in the respective district.

7.

That a special election for the selection of the members to the Commission for Election Districts 1 through 6 shall be held on or before June 6, 1989, under the procedures set forth herein. This election shall be for a term to expire December 31, 1992.

8.

Each candidate for the special election ordered herein shall be a qualified voter under the Constitution and laws of the State of Georgia, and shall be a resident of the voting district in which the candidate seeks to qualify for election at the time of qualification and shall have been a

resident of the district for the preceding twelve month period ending on the first day of candidate qualification.

Candidate qualifications for the special election shall open on April 3, 1989 and close on April 17, 1989. Candidates shall qualify with the Carroll County Board of Elections and pay a qualifying fee as provided by law.

9.

The terms of office of each Commission member elected by the special election shall begin on the day following the certification of the special election results by the Carroll County Board of Elections.

10.

In the event a member moves his residence from the district the member represents, the position held by such member on the Commission shall immediately become vacant. Vacancies occurring on the Commission shall be filled by special election pursuant to state law. Any person so elected to fill a vacancy on the Commission shall have the same qualifications required for candidates seeking election to that position under the terms of this order.

11.

Polling precincts for such special election shall be those as are regularly and customarily used in Carroll County elections, or as may hereafter be determined by the Carroll County Board of Elections.

12.

Commission members shall be elected by a majority vote of the electors, residing in the district from which the candidate qualifies and voting in such election. In the event no candidate shall receive a majority of the votes cast from the district in which the candidate runs, a run-off election shall be held pursuant to the laws of the state of Georgia.

Except as herein ordered, such election shall be conducted in all respects as a special election under and by virtue of the Constitution and the laws of the State of Georgia. Consistent with the provisions of this order, the Carroll County Board of Elections is hereby authorized and directed to promulgate such rules and regulations, cumulative of those provided by law, in conducting such election, or run-off election, that it may deem necessary to aid in the execution of this order.

13.

The term and conditions of this order shall be binding upon the Defendants, their successors, officers, agents, servants, and all other persons acting in concert with them.

14.

This order sets forth a temporary districting plan and method for electing members to a multi-district Board of Commissioners for Carroll County. It will remain in effect, however, until further order of this Court or until such time as it is superseded by a legislative plan which

is in all respects valid under the Constitution of the United States and Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

15.

The Defendants or their duly qualified successors are directed to notify the Court of any such legislative enactment within fifteen (15) days after being notified of preclearance under Section 5.

16.

The question of whether to require Defendants to pay attorneys' fees and costs, and if so how much, shall be reserved until the completion of this litigation, at which time the parties shall attempt to settle the issue. In the event they are unable to determine the issue of fees, costs and expenses, Plaintiffs may make an appropriate application within thirty (30) days hereof, and accordingly, the Court hereby retains jurisdiction of this action for the purpose of providing whatever further relief may be necessary.

SO ORDERED, this 16 day of Sept, 1988.

/s/ G. Ernest Tidwell
G. ERNEST TIDWELL
JUDGE, UNITED STATES
DISTRICT COURT

CONSENTED TO:

/s/ Wayne B. Kendall
COUNSEL FOR PLAINTIFFS

/s/ C. David Mecklin, Jr.
COUNSEL FOR DEFENDANTS

/s/ Illegible
COUNSEL FOR DEFENDANTS

CARROLL COUNTY COMMISSIONER DISTRICTS
PLAN ADOPTED FOR CONSENT DECREE &
MODIFIED FOR VOTING PRECINCTS

Plan: PCTCRLR Plan Created: 09/14/88

District	No Members	Total Population	% Deviation	Black Population	% Black
1	1	8465	-9.86	4352	51.41
2	1	9933	+5.87	1600	16.11
3	1	9692	+3.30	620	6.40
4	1	9878	+5.29	679	6.87
5	1	9323	- .63	1260	13.51
6	1	9055	-3.49	1168	12.90

Plan Total:

Ideal District Size for one Member = 9391

Add the following by hand.

	Total	Blacks
District 2		
Tract 9902 B105 (60% of 916/219) =	550	131
District 3		
Tract 9904 B117 (pt.)	3	0
District 4		
Tract 9907 B208 (90% of 220/78) =	198	70
District 5		
Tract 9902 B105 (40% of 916/219) =	336	88
Tract 9907 B208 (10% of 220/78) =	22	8
	388	96
District 6		
Tract 9904 B117 (pt.)	2	0

ORIGINAL

PLAINTIFF'S EXHIBIT 223

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

SHERYL CLARK, et al., Plaintiffs, v. TELFAIR COUNTY, GEORGIA, COMMISSION, et al., Defendants.	Civil Action No. CV 387-25 (Filed Oct. 26, 1988)

ORDER

Pursuant to the prior Order of the Court of February 23, 1988, and with the consent of the parties, the Court adopts the proposed new form of government for Telfair County submitted by the Defendants, together with provisions for implementing such form of government and schedule of elections, as follows:

1. A Board of Commissioners of Telfair County is hereby created to replace the present Telfair County Commissioner and shall be composed of five (5) members elected from single members districts. The districts shall be numbered one (1) through five (5) and are described in detail in attachments A (census map and block data) and B (narrative description). In the event of a conflict between the narrative description and any of the other descriptive documents, the narrative description, unless obviously in error, will prevail.

2. Candidates for each commissioner district shall reside within their respect [sic] districts and shall be voted on and elected solely by the voters who reside in such districts, and shall be qualified for such office pursuant to Georgia law.

3. Terms of office for commissioners shall be for four years. In the event that the first Board of Commissioners does not serve a full four term pursuant to the special elections called for herein, their first term of office shall be considered as a full term for purposes of this Order.

4. Election shall be by majority vote.

5. There shall be no durational residency requirement for the Board of Commissioners other than as provided by general state law, except that candidates must attain their residency in the district they seek to represent at least by the time they qualify as a candidate for the position.

6. Any commissioner who moves his residence from the district that he represents shall automatically terminate his office, and the vacancy shall be filled as hereinafter provided.

7. On the second Tuesday in the month immediately following preclearance by the Attorney General of the provisions of this Order pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, the Judge of Probate Court for Telfair County shall give notice of a special election to elect the Board of Commissioners. The notice shall provide that candidates may qualify for office

beginning at 9:00 a.m. on the second Monday immediately following the giving of notice until 5:00 p.m. on the fourth Friday immediately following the giving of such notice. The election shall be conducted by the Judge of Probate Court and shall be held on the second Tuesday in the second month immediately following the giving of notice of the election.

8. At least thirty (30) days prior to the conduct of the special election provided for herein, the county registrar shall notify each voter by mail of the commissioner district in which each such voter resides.

9. Subsequent elections for the Board of Commissioners shall be held at the time of the regular general election, commencing in 1992 and every four years thereafter.

10. Commissioners elected at the first election held under the terms of this Order shall take office on the Monday following their election, but not sooner than January 1, 1989. Thereafter, commissioners shall take office on January 1 immediately succeeding their election.

11. In addition to the oath required of all county officers, the commissioners shall take an additional oath to perform the duties of their office truly and faithfully, to the best of their skill and knowledge, and to account for all money, property and effects of such county, going into their possession, custody or control and or expended by or under their direction.

12. Before entering upon the discharge of their duties, each member of the board of commissioners shall give bond in the sum of twenty five thousand ($25,000)

dollars, except the chairman of said board who shall give bond in the sum of fifty thousand ($50,000) dollars, with some responsible surety company authorized to do business in Georgia, as his surety, payable to and approved by the Judge of Probate Court of the county and conditional for the faithful performance of the duties of the office, and the full and true accounting for all monies, funds and effects of said county coming into their hands or going into their custody, possession, and be filed in the office of the Judge of Probate Court and be there recorded and safely kept. The premiums on said bonds shall be paid by the county.

13. Should a vacancy occur on the Board of Commissioners by death, resignation, removal of residency from the district or otherwise, the Judge of Probate Court shall call a special election in such district to fill the vacancy within thirty (30) days from the date the vacancy arose. Provided, that should a vacancy occur and the unexpired term is six (6) months or less, the vacancy shall be filed by appointment of the remaining members of the Board of Commissioners. Any person elected or appointed to fill an unexpired term must be a resident of the district in which the vacancy occurred.

14. The Board of Commissioners shall elect a chairman who shall serve at the pleasure of the board. The chairman shall be compensated in the amount of one thousand ($1,000) dollars per month, plus actual out of pocket expenses. The other members of the board shall be compensated at the rate of three hundred ($300) dollars per month, plus actual out of pocket expenses. The clerk and other county employees shall be compensated in an amount to be determined by the Board of Commissioners.

15. The Board of Commissioners shall conduct periodic evaluations of all employees and compensation of employees shall be based upon length of employment, job performance and special training or other requirements for the job.

16. The total compensation to the chairman, the county commissioners and employees shall be paid from the funds of Telfair County. No members of said board shall receive any other compensation for any services or expenses incurred within the county of Telfair, but may be reimbursed for their expenses as provided for hereinafter. Should it become necessary for any member of said board to transact business for the county outside the limits of the county, then his or their expenses shall be paid out of the general funds of the county, when and only after said itemized expense account has been approved by a majority of the board.

17. Said board of commissioners shall hold at least one regular meeting each month, and the initial meeting shall be properly advertised so that the public will be notified and may appear before the board for any purpose. The board may conduct special meetings at any time. At the first meeting of the board, the former commissioner of Telfair County shall turn over to the board, all records, books and official records pertaining and belonging to said county connected with the business of said county, together with all county property, with a full inventory of the same and a full and complete statement showing the financial condition of the county. A complete audit of the books of said county may be made at this time by a certified public accountant. At this meeting, or

as soon thereafter as practicable, the board of commissioners shall organize by choosing one of the members as chairman and one as vice-chairman, and any chairman or vice-chairman shall hold his office until his successor is elected. Nothing herein shall prevent the reelection of any chairman or vice-chairman.

The vice-chairman shall, in the absence or disqualification of the chairman or during the vacancy in office of chairman, perform and discharge all duties of the chairman, and in the event of a vacancy in the office of chairman or vice-chairman the same shall be filled by the board at its next regular meeting after such vacancy becomes known. The chairman shall be the chief executive of the board. He shall see that all orders, resolutions, and rules of said board are faithfully filled and impartially executed and enforced and that all the officers, employees and agents of said board faithfully and impartially discharge the duties required of them. He shall have the general supervision of the affairs of the county, acting under orders of the board, and shall preside at all meetings of the board. He shall have the power to convene the board in extra session upon his own motion or upon written request of two (2) other members of the board, and shall do so whenever two (2) other members make such request in writing. Any three members of said board shall constitute a quorum. The chairman shall not vote except in case of a tie.

18. Said board of commissioners are hereby authorized to elect a clerk. Any citizen of said county, not a member of said board shall be eligible to hold said office of clerk of said board of commissioners, and shall receive a salary for his services to be fixed by said board, which

salary shall be paid in equal monthly installments. Said clerk before entering upon his duties shall give bond, with some responsible surety company, authorized to do business in Georgia, as his surety in the sum of fifty thousand ($50,000) dollars, to be approved by said board of commissioners, the premium on said bond to be paid by the county, payable to the ordinary of said county and his successors in office, and conditional for the faithful performance of his duties as such clerk, and to account for any and all funds, property or effects which may come into his hands as such clerk or otherwise, which said bond shall be filed with the ordinary of said county, and recorded on his minutes, and may be sued on in like manner as the bond of said commissioners. He shall keep minutes of all meetings of said board of commissioners, an inventory of all properties, and such books and records as may be required of him by said board of commissioners, and do such other acts and things as may be required of him by law or by said board of commissioners. The clerk shall serve at the pleasure of the board.

19. The board of commissioners, either themselves or their duly appointed agent, shall purchase all equipment, material and supplies necessary for said county, of such kind and quality and in such quantities as may be needed, and wherever practicable, purchases of all equipment, materials and supplies shall be by competitive bids, which bids shall be kept on file in the office of the commissioners and subject to inspection by the grand jury or other interested citizens. All purchases shall be charged to Telfair County; and before bills therefor are submitted to the board for approval, they shall be audited

and payment therefor recommended by the parties making such purchase; and if approved by the board of commissioners at a regular meeting of said board, said approval shall be endorsed on said bills by the chairman and a list thereof entered upon the minutes of the board, and when this is done warrants therefor shall be regularly drawn, which warrants shall be signed by the chairman and clerk as well as all other warrants drawn on the treasurer shall be signed before payment thereof is made, except that in the absence of the chairman, said vice-chairman shall be authorized to sign warrants. No purchases shall be paid for or be reimbursed by Telfair County without approval prior to purchase by the board or its duly appointed purchasing agent.

20. The board of commissioners may at their discretion, and when they deem necessary, elect a superintendent of roads and bridges. Said superintendent shall give his entire time to said duties as such superintendent and shall not engage in any other business. He shall receive such salary as may be fixed by the board of commissioners, and shall hold his position at the pleasure of the board of commissioners. The chairman may also act as superintendent of roads for an additional salary not to exceed five hundred ($500) dollars a month in addition to transportation.

21. The board of commissioners may have the books and accounts of the tax commissioner; custodian of all county funds; sheriff; superintendent of schools; board of commissioners and such other officers as may be necessary, audited by a certified public accountant of this State after they take charge of the affairs of said county to cover such period as they deem advisable, and every year

thereafter. Said audit shall be filed in the office of said board of commissioners of roads and revenues of said county, and shall at all times be subject to inspection by any citizen or taxpayer of said county. A summary of said audit shall be published in the official organ of Telfair County within thirty (30) days after it shall have been completed.

22. The said board of commissioners shall have, and they are hereby vested with exclusive jurisdiction and control over, the following to-wit: In directing, controlling and caring for all the property of the county according to law; in levying taxes according to law; in establishing, altering, abolishing public roads, private roads, private ways, bridges and ferries, according to law; in establishing, abolishing, or changing election precincts and militia districts according to law; in supervising the tax-commissioner's books; and in allowing the insolvent lists, for said county, according to law; and in settling all claims against the county; examining and auditing all claims and accounts of officers having the care, management, keeping, collecting, or disbursement of money belonging to the county, or appropriating for its use or benefit, and bringing them to settlement; and especially are they charged with frequently examining and auditing the books of all officers through whose hands any county funds much pass; they may require from all such officers, subject to an examination, such reports as may be necessary to keep such board of commissioners, fully informed at all times, of the financial condition of the county; in controlling, caring for and managing the convicts of the county, according to law; in making rules, regulations and provisions for the support

of the poor of the county, according to law; in promoting and preserving the public health of the county, with authority to quarantine against contagious diseases and epidemics, according to law; in regulating and fixing licenses fees as may be provided by law; to sue and be sued in the name of Telfair County; to exercise the power of eminent domain in the manner described by law; and generally to have and exercise all powers heretofore vested in the commissioner of said county when sitting for county purposes; and to exercise such other powers as are granted by law or as may be indispensable to the jurisdiction over county matters or county finance; in selecting and appointing all minor officers of the county whose election or appointment is not otherwise fixed by law, such as superintendent and guards and public work forces, janitor of the court house, superintendent of pauper farm should one be established, county physician and health officer, tax assessors, and county policeman, and other officers and guards as needed and authorized by law; and such board shall have the authority to employ a competent attorney at law, resident of the county, as county attorney to advise the board and represent the county in such matters as the board of commissioners may direct, who shall be paid such salary or compensation as the board of commissioners may direct, out of the regular funds of the county, with authority of said board of commissioners to fix his term of office or to discharge him at any time; in regulating peddling licenses according to law.

23. Said Board of Commissioners may receive contributions for the improvement of the public roads or bridges of the county from persons who own property

along the same, or from any other person or persons, or from the State government, or the United States government, or from any corporation or firm who may be interested in the improvement of the roads and bridges, and such contributions when received shall be used for the improvement of the roads or bridges designated by the contributor.

24. It shall be unlawful for any member of said board or the clerk of said board to have any financial interest in the sale or purchase of any article to or from the county, or to receive any rebate, expense account, transportation, or other valuable consideration in connection with or through the purchase of any equipment, materials or supplies for the county, or the awarding of any contract for said county; and if any commissioner, or the clerk of said board, shall knowingly or wilfully violate any provision of this section, he shall be guilty of a misdemeanor, and upon conviction shall be punished as prescribed by law and shall forfeit his office or be discharged from employment.

25. The board of commissioners shall publish not less than quarterly a report for all receipts and all disbursements of county funds.

26. Ga. Laws 1963, p. 705, which provides that county officers shall be ineligible to succeed themselves after serving two successive terms, shall be applicable to the Board of Commissioners, and the initial terms of members of the Board of Commissioners elected pursuant to the special elections called for herein shall count as a full term for purposes of Ga. Laws 1963, p. 705.

27. Defendants may alter or amend the terms and conditions of this Order in accordance with state law, except that defendants shall not enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that provided for herein without prior approval of the Court and preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1793c.

SO ORDERED THIS 26th day of October, 1988.

/s/ Dudley H. Bowen, Jr.
DUDLEY H. BOWEN, JR.
United States District Judge

I consent, this 14th day
of October, 1988

/s/ Laughlin McDonald
Laughlin McDonald
Attorney for Plaintiffs

I consent, this 19th day
of Oct., 1988

/s/ Billy W. Walker
Billy W. Walker
Attorney for Defendants

PLAINTIFF'S EXHIBIT 226

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY-AMERICUS DIVISION

REV. GEORGE NEALY, et al., Plaintiffs, v. WEBSTER COUNTY, GEORGIA COMMISSION, et al., Defendants.	)	Civ. No. 88-203-ALB-AMER (DF) (Filed Mar 16, 1990)

ORDER

Plaintiffs are black residents and registered voters of Webster County, Georgia. They contend that the at-large elected, single commissioner form of government for Webster County denies or abridges their right to vote in violation of Section 2 of the Voting Rights Act, 42 U.S.C. Section 1972, and the Constitution of the United States. The defendants are the Commission, the Commissioner and the Superintendent of Elections.

The parties are desirous of ending the law suit without further litigation and have agreed upon the following, which the Court accepts and adopts as a settlement of plaintiffs' claims.

1. (a) There is created a board of commissioners of Webster County to consist of a chairperson and three (3) other members to be elected as provided herein. Each candidate for membership on the board, other than the chairperson, shall be a resident of a commissioner district

which the candidate offers to represent and shall be elected by a majority vote of the qualified voters of such district voting in the elections provided for herein. Each candidate for chairperson of the board shall be a resident of Webster County and shall be elected by a majority vote of the qualified voters of the entire county voting in the elections provided for herein.

(b) For the purpose of electing members of the board of commissioners, other than the chairperson, Webster County is divided into three (3) commissioner districts. A verbal description of the districts is attached hereto as Exhibit A and is incorporated herein by reference. A census map showing the location of district boundaries is attached hereto as Exhibit B and is incorporated herein by reference.

2. (a) At a special election to be held on July 17, 1990 all three district members of the board of commissioners shall be elected. Each district member shall serve until January 1, 1993, and until a successor is elected and qualified. Subsequent elections for the commission, including both the district commissioners and the chairperson, shall be held at the regular general election in 1992 and every four years thereafter, and those elected shall take office on the 1st day of January following their election.

(b) The commissioner of Webster County who was elected pursuant to the provisions of an Act creating the office of commissioner of Webster County approved August 23, 1931 (Ga. Laws 1931, p. 597), as amended, shall continue to hold office and shall serve as chairperson of the commission until the board of commissioners

elected at the general election in 1992 takes office on January 1, 1993.

(c) All members of the board of commissioners shall be nominated and elected in accordance with the provisions of chapter 2 of Title 21 of the O.C.G.A., known as the "Georgia Election Code."

(d) Not later than thirty (30) days prior to the conduct of the special election called for herein, the superintendent of elections shall notify each voter of the county by mail of the commissioner district in which he or she resides.

3. (a) Each person offering as a candidate for membership on the board of commissioners shall have been a resident of Webster County for at least 24 months immediately preceding the date the person is nominated as a candidate for said office. Each person offering as a candidate to represent commissioner District 1, 2 or 3 shall be a resident of the respective commissioner district at the time of qualifying for nomination as a candidate for said office. A member of the board of commissioners representing Commissioner District 1, 2 or 3 shall remain a resident of the respective commissioner district during a term of office, and a vacancy shall be created if such a member moves from the commissioner district from which elected.

(b) Candidates for the office of chairperson of the board of commissioners shall have a high school diploma or its equivalent. Candidates for district positions on the board of commissioners are not required to have a high school diploma, but in the event that they do not they must present evidence at the time of qualifying

that they are enrolled in a program leading to the award of a degree that is the equivalent of a high school diploma.

4. In the event a vacancy occurs in the chairpersonship or other member of the board when more than six months remain before the expiration of the term of office, it shall be the duty of the election superintendent for the county, within 15 days after such vacancy occurs, to issue the call for a special election for the purpose of filling such vacancy. If the vacancy is in the membership from Commissioner District 1, 2 or 3 the special election shall be held only in the commissioner district where the vacancy exists. The special election shall be held countywide if the vacancy is in the office of chairperson. Any such special election shall be governed by the provisions of law providing for the holding and conducting of special elections. In the event a vacancy occurs in the chairperson or other member of the board with six months or less remaining before the expiration of the term of office, the probate judge of Webster County shall appoint a qualified person to fill the vacancy for the unexpired term.

5. The chairperson and other members of the board of commissioners of Webster County shall be commissioned by the Governor of Georgia and shall make and subscribe, before any officer authorized to administer oaths, an oath for the faithful discharge of their duties and to account for all funds and property of the county coming into their possession. Such commissioners shall, before entering upon the duties of their office, give a bond in the sum of $10,000.00 each, to be approved by the probate judge, and payable to the probate judge and said

officer's successors in office, conditioned upon the faithful discharge of their duties, and to account for all funds and property of the county coming into their possession. The surety on the bonds shall be a corporate surety company authorized to do business in this state, and the premiums therefor shall be paid from county funds. Such bonds shall be filed in the office of the probate judge and shall be recorded upon said officer's minutes.

6. The board of commissioners shall hold a regular meeting for the transaction of public business pertaining to county matters which shall be held in an appropriate office of the courthouse of Webster County on the first Tuesday in each month of the year, but the board of commissioners may hold additional meetings at any time they deem proper, upon the call of the chairperson or upon the written request of two commissioners other than the chairperson. The members of the board of commissioners shall be authorized to administer oaths and hear testimony as to all matters over which they have jurisdiction when meeting to conduct business pertaining to the county.

7. The chairperson of the board of commissioners shall employ a clerk and such other personnel as the chairperson deems necessary. All such personnel shall receive the compensation fixed by the full board of commissioners which shall be paid from county funds. It shall be the duty of the clerk of the board to attend all meetings of the board of commissioners and keep complete and orderly minutes of all such meetings. The clerk shall file and keep in the order of their date all original orders and papers, petitions, application, and other papers addressed to the board of commissioners concerning

county business. The clerk shall also keep on record and in a separate book the payment of all money out of the county treasury or county depository by order of the board of commissioners, giving the amount and date of such payments and the persons to whom paid and for what purposes paid. The clerk shall also keep a book showing a full and detailed statement of all accounts and other indebtedness contracted by the board of commissioners. All the books, files, and records required to be used or kept in the office of the board of commissioners shall always be ready and open to inspection by any taxpayer of the county during normal working hours. The clerk before entering on the discharge of the duties of office shall be required to give bond and take the same oath as required by commissioners, which bond shall be in the sum of $5,000.00, payable to the board of commissioners for the faithful performance of the clerk's duties. The clerk shall hold the office of the pleasure of the board of commissioners.

8. Three members of the board shall constitute a quorum but no action shall be taken by the board without the concurring vote of at lest two members of the board. the chairperson shall at each regular meeting of the board submit a report of the condition of the county affairs and make to the board such recommendations as the chairperson may deem proper. The board of commissioners shall set such rules and policies as may be necessary for the proper functioning of the board meetings. The chairperson shall vote only in the event of a tie vote by the other members of the board.

9. (a) The chairperson of the board of commissioners shall be presiding officer at all meetings of the board

unless the chairperson is absent, in which event one of the other commissioners shall preside at the meeting. The chairperson of the board of commissioners shall be the chief administrative officer of Webster County and shall supervise and direct the construction, maintenance, and improvement of all roads and bridges in Webster County and supervise and direct the employees, independent contractors, and prison laborers assigned to the county for road construction or maintenance purposes. The chairperson shall conduct these and all other duties pursuant to the policies, rules, resolutions, and ordinances approved and enacted by the full board. The chairperson shall also provide the board with a monthly report on the general status and condition of the road equipment and personnel matters relating to the road department and the status of all road and bridge projects. The chairperson shall be recognized as the official head of Webster County by state, federal, and other authorities for military and ceremonial functions. The chairperson may have such additional powers as the board of commissioners may delegate to the chairperson. The chairperson shall devote full time to the duties of office.

(b) The chairperson of the board of commissioners shall receive from the funds of Webster County an annual salary equal to that of the current commissioner which shall be paid in equal monthly installments from the funds of Webster County.

(c) The other members of the board shall receive a salary of $200 each for each meeting of the board actually attended payable from the funds of Webster County.

10. The board of commissioners of Webster County shall have exclusive jurisdiction and control over the following matters, to wit: in controlling all of the property belonging to the county as the board may deem expedient according to law, including the proceeds of the sale of any and all bonds which may have theretofore been authorized or which may hereafter be authorized in the county; in supervising tax collector's and tax receiver's books; in allowing the insolvent list of the county; in settling all claims and accounts of officers having the care, management, or disbursement of funds belonging to the county and in bringing them to settlement; in providing for the poor of the county; and for the promotion of health as granted by law or not inconsistent with law; to levy taxes for county purposes; to examine the tax digest of the county for the correction of errors; in regulating or fixing license fees or taxes as may be provided by the law; in requiring any county officer or department to submit budget information and budget requests; in maintaining and operating the county public correctional institution or other similar facility of the county as provided by law, such as superintendents, wardens, guards or convicts, and district road overseers; in providing an annual budget and acting on all budgetary matters and budgetary requests. The board of commissioners shall also have and exercise all the powers heretofore vested in the commissioner of Webster County and such other powers as are now or as may hereafter be provided by law for governing authorities of counties, by whatever name called, or as may be necessary for the board of commissioners to effectively carry out its jurisdiction over county matters and county finances.

11. The treasurer of Webster county or depository of the county shall not disburse or pay out any funds from the county treasury on any order unless the same shall have been approved by the board of commissioners and signed by the chairperson of the board of commissioners, provided this requirement shall not apply to the jury script issued by the clerk of the superior court and orders drawn by the judge of the superior court and district attorney; provided, further, that the board of commissioners may be proper resolution or ordinance prescribe rules and regulations which provide for the signing of checks by a person or persons other than the chairperson for the disbursements of county funds. Unless changed by proper resolution or ordinance, only the signature of the chairperson of the board of commissioners shall be required to disburse funds.

12. The board of commissioners shall comply with the budgeting and audit requirements of Chapter 81 of Title 36 of the O.C.G.A.

13. The board shall have the authority to employ a competent attorney at law as county attorney to advise the board and represent the county in such matters as the board of commissioners may direct, who shall be paid such salary or compensation as may be fixed by the board. The county attorney shall serve at the pleasure of the board. Whenever it is deemed necessary, the board may employ additional counsel to assist the county attorney who shall be paid such compensation as the board may direct out of regular funds of the county.

14. The defendants shall maintain a copy of this Order, with attachments, at the county courthouse in the

office of the commissioner in a conspicuous and visible place for inspection and copying during regular business hours by members of the public, and shall cause the Order, with attachments, to be published within thirty (30) days from the date hereof in a newspaper of general circulation in the county.

15. This Order shall be binding upon the parties, their successors, agents and assigns.

16. Prior to implementation, and within thirty (30) days from the date hereof, the defendants shall submit this Order for preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c.

17. The Court retains jurisdiction over plaintiffs' request for costs and attorneys fees.

AND IT IS SO ORDERED.

/s/ Duross Fitzpatrick
U.S. District Judge

We Consent.

/s/ Laughlin McDonald
Laughlin McDonald
March 7, 1990
Attorney for Plaintiffs

/s/ Jesse G. Bowles
Jesse G. Bowles
March, ___, 1990
Attorney for Defendants

LMC/nealy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

MARVIN HOWARD, et al.,	:	
Plaintiffs,	:	
vs.	:	Civil Action No. CV390-057
COMMISSIONER OF WHEELER COUNTY, GEORGIA, et al.,	:	(Filed Jan. 13, 1993)
Defendants.	:	

CONSENT DECREE, ORDER, AND JUDGEMENT

Plaintiffs initiated this action under Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973, and the First, Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution of the United States and requested declaratory and injunctive relief concerning the at-large elected single commissioner form of government for Wheeler County, Georgia. Defendants have denied that plaintiffs are entitled to the relief sought.

The parties are desirous of ending this lawsuit without further litigation and have agreed to the method described below for the future election of a multi-member Board of Commissioners of Wheeler County, which the Court accepts and adopts as a resolution of the plaintiffs' claims. THEREFORE, upon due consideration of the record herein, it is ORDERED, ADJUDGED AND DECREED that:

I. JURISDICTION

This Court has jurisdiction of the parties and the subject matter of this action, and the parties have agreed to the entry of this Consent Decree.

II. BOARD OF COMMISSIONERS

A. Defendants will not further enforce the at-large elected single commissioner form of government of Wheeler County, Georgia as set forth in Georgia Laws 1924, p. 378-88 or other law.

B. There is created a Board of Commissioners of Wheeler County to consist of three members to be elected as provided herein. One member shall be elected from each of three single-member election districts, to be known as Election District Number 1, Election District Number 2, and Election District Number 3.

C. For the purpose of electing the district members of the Board of Commissioners, Wheeler County shall be divided into election districts as particularly described and as set forth in Exhibit "A" attached hereto and made a part hereof. (Exhibit "A" is a census block listing and statistical breakdown of the election districts.)

D. The election districts are more completely described on the map attached hereto and made a part hereof as Exhibit "B".

E. The pertinent demographic information for the three Election Districts described in Exhibit "A" and Exhibit "B" attached hereto, according to the 1990 United States Census of Population is as follows:

TOTAL POPULATION
WHEELER COUNTY COMMISSION
SUMMARY

DIST	TOTAL	WHITE	BLACK	HIS-PANIC	OTHER	DEVIA-TION
1	1554	508 32.69%	1026 66.02%	20 1.29%	0 0.0%	-4.90%
2	1659	1377 83.00%	253 15.25%	25 1.51%	4 0.24%	+1.53%
3	1690	1434 84.85%	194 11.48%	56 3.32%	6 0.36%	+3.43%
TOTAL	4903	3319 67.69%	1473 30.04%	101 2.06%	10 0.20%	

VOTING AGE POPULATION
WHEELER COUNTY COMMISSION
SUMMARY

DIST	TOTAL	WHITE	BLACK	HIS-PANIC	OTHER
1	1042	399 38.29%	633 60.75%	10 0.96%	0 0.0%
2	1214	1033 85.09%	160 13.18%	19 1.57%	2 0.16%
3	1239	1061 85.63%	131 10.57%	43 3.47%	4 0.32%
TOTAL	3495	2493 71.33%	924 26.44%	72 2.06%	6 0.17%

F. Each candidate for membership on the Board of Commissioners shall have resided in Wheeler County for at least twelve months immediately preceding the first

day of candidate qualification and in the election district which the candidate offers to represent for at least six months immediately preceding the first day of candidate qualification. Only residents of the district shall vote in a primary, run-off, special or general election for the member representing the respective district. District members shall be elected by a majority vote of the qualified voters residing in the district from which the candidate qualifies and voting in such election. In the event no candidate shall receive a majority of the votes cast from the district in which the candidate runs, a run-off election shall be held pursuant to the laws of the State of Georgia.

G. All candidates for the Board of Commissioners shall be registered electors entitled to vote for members of the General Assembly of Georgia.

H. A special primary and special election shall be held in accordance with the Georgia Election Code, O.C.G.A. Section 21-2-540, to elect the three members of the Board of Commissioners for Election Districts 1, 2, and 3 as defined by the map attached hereto and made a part hereof as Exhibit "B". The special primary shall be held April 6, 1993 and any necessary run-off election shall be held in accordance with O.C.G.A. Section 21-2-501 no sooner than the 14th day and no later than the 21st day after the day of holding the preceding special primary election. Should all candidates for Districts 1, 2 and 3 be unopposed following the special primary election or any necessary run-off, no special election shall be held. A special election, if necessary, shall be held on May 18, 1993 and any necessary run-off election to be held in accordance with O.C.G.A. Section 21-2-501 no sooner than the 14th day and no later than the 21st day after the

day of holding the preceding special election. At the 1993 special primary and, if necessary, special election, each member from Election Districts 1, 2, and 3 shall be elected to a four-year term to extend until the regularly scheduled primary and general election is held in 1996 and a successor takes office on the first Monday in January, 1997. Thereafter, all members shall be elected at the general election immediately preceding the expiration of their respective terms of office for terms of four years and until their successors are qualified and elected and shall take office on the first Monday in January immediately following their election.

I. No later than February 15, 1993, the Superintendent of Elections of Wheeler County shall give notice of a special primary and special election to elect all members of the Wheeler County Board of Commissioners. The notice shall specify the special primary and special election dates as described in paragraph H and the candidate qualification period as described in paragraph J.

J. In anticipation of the special primary election of the Board of Commissioners to be held on April 6, 1993, defendant Superintendent of Elections of Wheeler County or his successor will begin receiving qualifications of candidates for election from each of Election Districts 1, 2, and 3 at 9 a.m., Monday, February 22, 1993 and continue to qualify candidates until 12:00 noon, Friday, February 26, 1993. Candidates shall pay a qualifying fee as provided by law.

K. The terms of office of each Commission member elected by the special primary or special election, if necessary, described herein shall begin on the day following

the certification of the special primary election or special election results by the Superintendent of Elections of Wheeler County.

L. In the event a vacancy occurs on the Board of Commissioners of Wheeler County for any reason other than the expiration of the term of office, the vacancy shall be filled in accordance with the provisions of the Georgia Election Code, O.C.G.A. Section 21-2-540, et seq., and O.C.G.A. Section 36-5-21 and the residency requirement set out in this Decree. In the event a Commission member elected from Election Districts 1, 2, or 3 moves his or her residence from the district the member represents, a vacancy shall exist from such district and shall be filled in the same manner as other vacancies are filled. Any person so elected to fill a vacancy on the Commission shall have the same qualifications required for candidates seeking election to that position under the terms of this Decree.

M. The current commissioner of Wheeler County who was elected pursuant to the provisions of an Act creating the office of Commissioner of Wheeler County, Georgia Laws 1924, p. 378-88, as amended, shall continue to hold office until the Board of Commissioners elected as described herein take office, and shall possess and have the duties and responsibilities of exercising all of the power given him by law until so succeeded.

N. No later than thirty (30) days prior to the conduct of the special primary called for herein, the Wheeler County Superintendent of Elections shall notify each voter of the county by mail of the commissioner district in which he or she resides.

O. The Board of Commissioners shall hold a regular meeting for the transaction of public business pertaining to county matters which shall be held in an appropriate office accessible to the public each month of the year, the day and time and place to be decided by the Board of Commissioners, but the Board of Commissioners may hold additional meetings at any time it deems proper, upon the call of the Chair or upon the written request of two commissioners other than the Chair. The members of the Board of Commissioners shall be authorized to administer oaths and hear testimony as to all matters over which they have jurisdiction when meeting to conduct business pertaining to the county. At the first meeting of the Board of Commissioners elected at the special election described herein, the former commissioner of Wheeler County shall turn over to the Board of Commissioners all records, books and official records pertaining to and belonging to said county connected with the business of said county, together with all county property, with a full inventory of the same and a full and complete statement showing the financial condition of the county. A complete audit of the books of said county may be made at this time by a certified public accountant.

P. The three members of the Board of Commissioners shall elect from among themselves one to serve as the Chair of the Board of Commissioners and one to serve as Vice Chair. The Chair of the Board of Commissioners shall be the presiding officer of all meetings of the Board unless the Chair is absent, in which event the Vice Chair shall preside at the meeting. The Chair shall be the chief executive of the Board of Commissioners.

Q. The Chair shall at each regular meeting of the Board of Commissioners submit a report of the condition of the county affairs and make to the Board such recommendations as the Chair may deem proper. The Board of Commissioners shall set such rules and policies as may be necessary for the proper functioning of the board meetings.

R. Except as superseded by the provisions of this Decree, the Board of Commissioners shall have and exercise all the powers, duties and responsibilities heretofore vested in the Commissioner of Wheeler County pursuant to Georgia Laws 1924, p. 378-88, as amended, as well as all the powers and duties provided the governing authority of each county under the laws of the State of Georgia.

S. The Chair of the Board of Commissioners shall receive a salary of $1,000.00 per month and each of the other two members shall receive a salary of $300.00 per month, all payable from the funds of Wheeler County.

T. The defendants shall maintain a copy of this Order with attachments, at the Wheeler County Courthouse in the office of the Commissioner in a conspicuous and visible place for inspection and copying during regular business hours by members of the public, and shall cause the Order, with attachments, to be published within thirty (30) days from the effective date of this Order in a newspaper of general circulation in Wheeler County.

U. Prior to implementation, and within thirty (30) days from the effective date of this Order, the defendants shall submit this Order to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c.

III. ATTORNEYS' FEES, COSTS, AND EXPENSES

Any claim for attorneys' fees, costs, and expenses will be addressed by the Court by separate Order. The Court retains jurisdiction over plaintiffs' request for attorneys' fees, costs, and expenses.

IV. MISCELLANEOUS EFFECTS OF DECREE

A. The terms and conditions of this Order shall be binding upon the defendants, their successors, officers, agents, servants, and all other persons acting in concert with them.

B. Except as they may conflict with the provisions of this Decree, the laws of the State of Georgia shall continue to govern elections for the Wheeler County Board of Commissioners and to continue to conduct, govern, and prescribe the powers and duties of the members of the Wheeler County Board of Commissioners.

C. Should the United States Department of Justice not preclear the election plan and the implementation schedule outlined above on or before March 26, 1993, the special primary and special election called for in this Order shall not be held and the matter shall be brought before the Court for further Order. The Court shall specifically retain jurisdiction of this case until such time as the election plan and implementation schedule or a subsequent plan and schedule is precleared by the Department of Justice.

D. If preclearance is granted, the Court will enter an appropriate order accepting and approving the precleared plan.

AND IT IS SO ORDERED this 13th day of January, 1993.

/s/ Dudley H. Bowen, Jr
DUDLEY H. BOWEN, JR.
United States District Judge

/s/ Mary Wyckoff
MARY WYCKOFF
Attorney for Plaintiffs

/s/ R. Napier Murphy
R. NAPIER MURPHY
Attorney for Defendants